

J36VJAR1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 475 (PAC)

5 ROLAND JARVIS,

6 Defendant.

SUPPRESSION HEARING

7 -----x
8 New York, N.Y.
9 March 6, 2019
9:47 a.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 DANIEL G. NESSIM

EUN YOUNG CHOI

18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant

20 IAN H. MARCUS AMELKIN

SABRINA SHROFF

21 LAUREN DOLECKI

22 ALSO PRESENT: CAROLINE LEFEVER, Paralegal-USAO

CANDICE HENRY, ATF

23 CHIRAAAYU GOSRANI, Paralegal-FDNY

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(Case called)

THE DEPUTY CLERK: Counsel for the government, please state your appearance.

MR. NESSIM: Good morning, your Honor.

Daniel Nessim and Eun Young Choi, for the government.

THE COURT: Ms. Choi.

MR. NESSIM: Joining us at counsel table is our paralegal in our office, Caroline Lefever, and Special Agent Candice Henry, with the Bureau of Alcohol, Tobacco, Firearms and Explosives.

THE COURT: Ms. Henry, how are you?

MS. HENRY: Good morning.

MR. MARCUS AMELKIN: Good morning, your Honor.

Ian Marcus Amelkin of the Federal Defenders of New York.

Joining me at counsel's table is Ms. Sabrina Shroff, another attorney in our office; Roland Jarvis, who, of course, is our client; Lauren Dolecki, who is a secondi in our office from Debevoise & Plimpton; and at the end of the table is Chiraayu Gosrani, who is a paralegal in our office.

THE COURT: All right, Mr. Amelkin.

How are you this morning, Mr. Jarvis?

THE DEFENDANT: I'm all right.

THE COURT: Do you want to call your first witness, Mr. Nessim, Mr. Choi?

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1 MR. NESSIM: Yes, your Honor.

2 The government calls Officer Anthony Cassase.

3 (Continued on next page)

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J365jar2

Cassase - direct

1 THE DEPUTY CLERK: Please state and spell your full
2 name for the record.

3 THE WITNESS: Anthony Cassase.

4 ANTHONY CASSASE,

5 called as a witness by the Government,

6 having been duly sworn, testified as follows:

7 THE COURT: All right, Mr. Nessim.

8 DIRECT EXAMINATION

9 BY MR. NESSIM:

10 Q. Good morning, Officer Cassase.

11 A. Good morning.

12 Q. Where do you work?

13 A. Manhattan North Narcotics.

14 Q. What is Manhattan North Narcotics?

15 A. We investigate narcotics cases.

16 Q. Do you work for the New York City Police Department?

17 A. Yes.

18 Q. Have you always worked in Manhattan North Narcotics?

19 A. No.

20 Q. How long have you been with the NYPD?

21 A. Little over six and a half years.

22 Q. Where did you work before you were in Manhattan North
23 Narcotics?

24 A. I was in Bronx Borough crime.

25 Q. Roughly what period were you in Bronx Borough crime?

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Cassase - direct

1 A. Approximately August to November.

2 Q. Of which year?

3 A. Of 2018.

4 Q. Where were you before Bronx Borough crime?

5 A. I was in the anti-crime team in the 44 Precinct in the
6 Bronx.

7 Q. Where in the Bronx is the 44 Precinct located?

8 A. That's south Bronx.

9 Q. What unit were you assigned to in May of 2018?

10 A. 44 Precinct anti-crime.

11 Q. And, what are your duties and -- what were your duties and
12 responsibilities as an anti-crime officer?

13 A. We handled violent crimes, mainly robberies, guns,
14 burglaries. We also deal with the local gangs in the area.

15 Q. Have you had experience in investigating and detecting
16 violent crime?

17 A. Yes.

18 Q. And gun crimes?

19 A. Yes.

20 Q. Approximately how many times have you been involved in
21 firearms arrests?

22 A. I have several myself and I have been involved in probably
23 20, 30 other ones.

24 Q. Directing your attention to the evening of May 3rd into the
25 morning of May 4th, 2018 --

J365jar2

Cassase - direct

1 A. Yes.

2 Q. -- what were you doing that night?

3 A. I was patrolling the 44 Precinct as an anti-crime officer.

4 Q. And what shift were you working on that night?

5 A. I started at 9:30 at night and finished at 6:05 in the
6 morning the next day.

7 Q. What day is that shift considered under NYPD policy?

8 A. Excuse me?

9 Q. What day would you consider that shift having taken place
10 on?

11 A. That would be the 4th.

12 Q. But it began on the 3rd?

13 A. It began on the 3rd and goes into the 4th but it is
14 considered the 4th.

15 Q. Were you working with other officers that night?

16 A. Yes.

17 Q. Who were you working with?

18 A. Officer Maria, Officer Cabrera, and Sergeant Crane.

19 Q. What were you wearing?

20 A. Plain clothes.

21 Q. What were the other officers wearing?

22 A. We were all in plain clothes.

23 Q. And, how were you traveling that night?

24 A. In an unmarked vehicle.

25 Q. Where were you sitting in the vehicle?

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Cassase - direct

1 A. I was in the back seat with Officer Maria, and Sergeant
2 Crain and Officer Cabrera were in the front seat.

3 Q. Directing your attention to approximately 1:00 a.m. on May
4 4th, where were you at that time?

5 A. The vicinity of 166 and Woodycrest.

6 Q. And what, if anything, did you observe at that time and
7 place?

8 A. We observed a group of people on the northeast corner,
9 little bit off the northeast corner and they were -- it looked
10 like they were drinking, there was cups everywhere and I could
11 smell marijuana coming from the location.

12 Q. How were you able to smell marijuana?

13 A. My window was down, I could smell it.

14 Q. And you mentioned the northeast corner, what was the
15 intersection?

16 A. It is west 166 Street and Woodycrest Avenue.

17 Q. So, Ms. Lafever, if you could pull up what is marked for
18 identification Government Exhibit 1?

19 Officer Cassase, do you recognize this?

20 A. Yes.

21 Q. What is it?

22 A. This is the area where the arrest took place to the 44th
23 Precinct.

24 Q. And, is the intersection we just described, is that on this
25 map?

J365jar2

Cassase - direct

1 A. Yes.

2 Q. Is this map a fair and accurate representation of this
3 neighborhood of the Bronx?

4 A. Yes.

5 MR. NESSIM: Your Honor, the government offers
6 Government Exhibit 1.

7 MR. MARCUS-AMELKIN: No objection.

8 THE COURT: 1 is in evidence.

9 (Government's Exhibit 1 received in evidence)

10 BY MR. NESSIM:

11 Q. Officer Cassase, using this map, can you describe where
12 that intersection is located?

13 A. Yes. Can I touch the screen?

14 Q. Sorry?

15 A. How do you want me to do that?

16 Q. If you can use maybe, there are labels on the map to help
17 you identify locations or street names?

18 A. Oh. West 166th Street and Woodycrest.

19 Q. Is that the where the red circle is being drawn now?

20 A. Yes.

21 Q. Is that the corner that you observed this group of people?

22 A. Yes.

23 Q. What, if anything, did you know about this neighborhood of
24 the Bronx at this time?

25 A. There was a lot of violence, gang activity. We had several

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Cassase - direct

1 shootings in that area.

2 Q. And what, if anything about the gang activity that stands
3 out in your mind?

4 A. We have -- we have a gang called Five Bridges, they're like
5 up in 165, approximately, 165, 167 University. We have a crew
6 called Woody Crime, they're down by 165, like Nelson,
7 Woodycrest area. There is also another Dominican crew down
8 about on Anderson and 165, 166 area.

9 Q. So -- I'm sorry.

10 A. No. Go ahead.

11 Q. So, the first gang you identified you said 165 to 167
12 University?

13 A. Yes.

14 Q. Using the labels on this map, can you direct our attention
15 to approximately where that area is located?

16 A. It's --

17 MR. MARCUS-AMELKIN: Objection. Relevance.

18 THE COURT: Overruled. He is talking about precinct
19 conditions.

20 BY MR. NESSIM:

21 Q. Do you see on the map the approximate area?

22 A. Yes; West 165 Street and University in the bottom left
23 corner, yes, and then it goes up to about 167 Street and
24 University.

25 Q. Is that a little bit cut off?

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Cassase - direct

1 A. Yes. It is about the same area.

2 Q. And then the Woody Crime gang you mentioned?

3 A. Yeah, they're down by 165, bottom center of the screen by
4 Nelson to, about, Woodycrest.

5 Q. So, approximately where A&A Grocery and Deli is labeled on
6 the map?

7 A. Yes.

8 Q. And the third group that you identified? Approximately
9 where?

10 A. Down by Anderson on the right side.

11 Q. Anderson and what cross street?

12 A. 166 to 167-ish, approximately.

13 Q. So, around the block where it says 1150 Realty?

14 A. Say that again?

15 Q. Around where the label reads 1150 Realty?

16 A. Yes.

17 Q. Thank you.

18 Ms. Lafever, can we please pull up for identification
19 Government Exhibit 2?

20 Officer Cassase, do you recognize this?

21 A. Yes.

22 Q. What is it?

23 A. This is where the arrest was made.

24 Q. What intersection does this show?

25 A. This is West 166 Street and Woodycrest Avenue.

J365jar2

Cassase - direct

1 Q. Is this a fair and accurate representation of that
2 intersection?

3 A. Yes.

4 MR. NESSIM: Your Honor, the government offers
5 Government Exhibit 2.

6 MR. MARCUS-AMELKIN: No objection.

7 THE COURT: 2 is in evidence.

8 (Government's Exhibit 2 received in evidence)

9 BY MR. NESSIM:

10 Q. Officer Cassase, using this exhibit, can you describe
11 approximately where the group of people you observed were
12 located?

13 A. Right by these, this dark gray car in the front.

14 Q. When you say the dark gray car, do you mean the third car?

15 A. Yes.

16 Q. Parked on the street?

17 A. Yes.

18 Q. Approximately how many people did you see?

19 A. I would say about possibly eight to 10.

20 Q. And, what did you mention you observed them doing?

21 A. It appeared that they were drinking and I could smell
22 marijuana coming from the area.

23 Q. What did you decide to do?

24 A. We approached the group and when we approached them I
25 noticed the defendant start walking off. That's what drew my

J365jar2

Cassase - direct

1 attention to him initially.

2 Q. You mentioned the defendant. Do you recognize the
3 individual who attracted your attention in the courtroom today?

4 A. Yes.

5 Q. Could you identify him by where he is sitting and an
6 article of clothing he is wearing?

7 A. Dark colored shirt in the center of the table.

8 MR. NESSIM: Your Honor, we would like the record to
9 reflect that the witness has identified the defendant.

10 THE COURT: Mr. Marcus Amelkin.

11 MR. MARCUS AMELKIN: No objection.

12 THE COURT: Okay.

13 BY MR. NESSIM:

14 Q. Can you describe what took place as you approached the
15 group?

16 A. Yes. As soon as we rolled up, I saw the defendant start
17 walking off, he had like a nervous, like -- like seen-a-ghost
18 type face. He started adjusting his waistband and started
19 walking south on Woodycrest. He kept looking at me, I stepped
20 out of the vehicle. I said: *Police. Hold up.* He kept
21 walking. So, I walked south on Woodycrest in the street to try
22 to cut him off, I thought he was going to run. As I approached
23 him from the street, he turned his body away from me and
24 started walking northbound again. I told him again, I said,
25 *hold up*, again and he tried to run and he ran between two cars

J365jar2

Cassase - direct

1 into the street and that's where I grabbed him.

2 Q. How far would you say he got when you say he ran?

3 A. A couple steps.

4 Q. And, just to back up a little bit to break some of that
5 down, so you mentioned what drew your attention initially to
6 the defendant?

7 A. He was the only one that I saw that started walking away
8 right away as soon as he came up.

9 Q. And, which direction was he walking?

10 A. He was walking south.

11 Q. So, using this Government Exhibit 2 that's on your screen,
12 so which street is in the street with the cars parked in the
13 foreground of this picture?

14 A. This is Woodcrest Avenue.

15 Q. And the street running the other direction, the
16 intersection, that is which street?

17 A. That's West 166th Street.

18 Q. And so, when he walked southbound, which way was he
19 walking?

20 A. Towards 166 Street.

21 Q. Approximately where was it that you got out of your patrol
22 car?

23 A. About the same, same place as the red circle, right in that
24 area.

25 Q. And where did you walk?

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Cassase - direct

1 A. I walked -- I was in the street. I walked south in the
2 street.

3 Q. What did you observe as were walking south?

4 A. I observed him, he kept looking at me. I wasn't really
5 paying attention to anything else to be honest with you but I
6 was watching him and just observed him, he kept looking at me
7 and he adjusted the waistband. And when I started approaching
8 him he turned the opposite way, looked like he was trying to
9 hide whatever he had.

10 Q. And you mentioned he is touching his waistband. Can you
11 describe what you saw?

12 A. Yes. He held it and slid it to the right a little bit and
13 then he was just holding it.

14 Q. What did that make you think when he touched his waistband?

15 A. I believed that he had a gun.

16 Q. Why do you believe that?

17 A. Because I have been involved in -- I have been involved in
18 a bunch of other arrests I have seen that before. I, myself,
19 carry a gun, so when I put it in front of my waistband I use
20 the same type of movements because you don't want to --
21 sometimes if it slides in you don't want it to fall, or if are
22 you going to run you want to slide it over a little bit because
23 it makes it more secure.

24 Q. And, you mentioned you said something to the defendant?

25 A. Yes.

J365jar2

Cassase - direct

1 Q. What did you tell him?

2 A. I said: *Police. Hold up.*

3 Q. How many times did you tell the defendant that?

4 A. At least twice.

5 Q. And when in the interaction did you say that?

6 A. What's that?

7 Q. At what point in this interaction did you tell the
8 defendant to hold up?

9 A. When I got out of the car, initially, and then when I
10 approached him on the sidewalk. And then he said: *For what?*
11 And then took off running.

12 Q. And let's talk about the running. What did you do once you
13 saw the defendant run?

14 A. I grabbed him by his hair and I tackled him.

15 Q. And where did you tackle him?

16 A. In the street. He ran between the two cars and then I
17 tackled him in the street.

18 Q. So, you landed on the pavement?

19 A. Yes.

20 Q. And, what did you do once the defendant was on the ground?

21 A. He still had his hands underneath him. He was face down so
22 he still had his hand underneath him and I was trying to pull
23 his arm off because I didn't -- it seemed like he still had his
24 hand on the gun.

25 Q. And when you were trying to pull his arm up what was he

J365jar2

Cassase - direct

1 doing with his arm?

2 A. He was pulling back.

3 Q. What do you mean by pulling back?

4 A. He wasn't letting me pull his arm back. He was like
5 resisting, pushing forward the opposite direction of me.

6 Q. What happened next?

7 A. My partners came over and then Officer Maria reached
8 underneath and took his hand off the gun and pulled the gun
9 out.

10 Q. Officer Maria recovered the gun?

11 A. Correct.

12 Q. What happened after the gun was recovered?

13 A. He was placed under arrest.

14 Q. Approximately how long would you say it was between the
15 point where you got out of your patrol car and where you
16 tackled the defendant?

17 A. 15, 20 seconds.

18 Q. And, approximately how long would you say it was between
19 the time where you tackled the defendant and the time where you
20 recovered the firearm?

21 A. Probably 15 seconds. 10, 15 seconds. I can't remember.

22 MR. NESSIM: Your Honor, can we have one moment?

23 THE COURT: Yes.

24 (Counsel conferring)

25 MR. NESSIM: Your Honor, at this time the government

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Cassase - direct

1 offers into evidence Government Exhibits 3A, 4A, and 5A, which
2 are videos related to this incident, we understand, without
3 objection from defense counsel.

4 MR. MARCUS-AMELKIN: That's correct.

5 THE COURT: 3A, 4A, and 5A are in evidence.

6 (Government's Exhibits 3A, 4A, and 5A received in
7 evidence)

8 BY MR. NESSIM:

9 Q. Ms. Lafever, can we please pull up Government Exhibit 5A?

10 (Video played)

11 Q. Officer Cassase, do you recognize this video?

12 A. Yes.

13 Q. What is it?

14 A. This is a video of the incident that happened, the arrest.

15 Q. Do you know approximately where this camera is located?

16 A. It's on the building that was in the other picture.

17 Q. We are going to rewind this video and just ask you some
18 questions about what is happening during the course of it.

19 A. Sure.

20 THE COURT: Officer, do I understand the camera was on
21 the building in Exhibit 2?

22 THE WITNESS: Yes.

23 BY MR. NESSIM:

24 Q. So, the street it is facing out into, what street is that?

25 A. That's Woodycrest Avenue.

J365jar2

Cassase - direct

1 Q. And then the intersection that you can see at the top
2 left-hand corner of the video, what intersection is that?

3 A. The left side, that's West 166 Street.

4 MR. NESSIM: Ms. Lafever, if you would restart the
5 video to the beginning and pause it at about 40 seconds?

6 (Video played)

7 MR. NESSIM: You can pause it there.

8 BY MR. NESSIM:

9 Q. What is the car that pulled up?

10 A. That's our vehicle.

11 Q. The patrol vehicle?

12 A. Yes.

13 Q. What do you see along the fence of this video?

14 A. I see a couple people.

15 Q. Who are those people?

16 A. Those are people that were in the group.

17 Q. The group that you mentioned that you observed on the --

18 A. Correct.

19 Q. -- sidewalk?

20 A. Correct.

21 Q. Is that the full group or is there more?

22 A. No. There is more people to the right of the screen.

23 MR. NESSIM: And, Ms. Lafever, if you would continue
24 playing the video and we will stop playing at around 591
25 seconds in?

J365jar2

Cassase - direct

1 (Video played)

2 Q. What do you see happening now?

3 A. That's the person all the way to the left, I believe that's
4 the defendant walking off, and all the other group is getting
5 up.

6 MR. NESSIM: Let's just play it a little bit longer,
7 Ms. Lafever.

8 Q. Which one is the defendant?

9 (Video played)

10 Q. Pause it, please.

11 A. The person all the way over, the farthest to the left.

12 Q. What sort of -- what kind of clothing is he wearing or how
13 would you identify him?

14 A. It looks like dark clothes and -- I can't -- it is a little
15 blurry.

16 Q. Dark colors?

17 A. Dark color, clothes it looks like, yeah.

18 MR. NESSIM: Ms. Lafever, if you would keep playing
19 it?

20 (Video played)

21 MR. NESSIM: And pause it for one moment.

22 Q. What is this video showing now?

23 A. This is me getting out of the car.

24 Q. Where are you?

25 A. I'm in the street.

J365jar2

Cassase - direct

1 Q. Can you describe which sort of, if we were dividing this
2 video into four boxes are you in the top left box, top right
3 box?

4 A. I'm on the top wearing like a white -- like a light-colored
5 shirt in the street.

6 MR. MARCUS-AMELKIN: Can he circle it?

7 MR. NESSIM: Yes.

8 Ms. Lafever, will you circle where Officer Cassase is
9 identifying where he is located and please circle who is
10 identified as the defendant?

11 Q. Are those circles drawn in the approximate locations that
12 you referenced?

13 A. Yes.

14 MR. NESSIM: Ms. Lafever, if you would keep playing
15 the video?

16 (Video played)

17 MR. NESSIM: Stop it here.

18 Q. What just happened?

19 A. The defendant stopped and is now heading in the opposite
20 direction going northbound now.

21 MR. MARCUS AMELKIN: Could the witness speak more
22 directly into the microphone?

23 THE WITNESS: Yes.

24 THE COURT: We are trying to record everything you.

25 The microphones aren't working so you have to speak

J365jar2

Cassase - direct

1 louder.

2 MR. MARCUS AMELKIN: I thought maybe that was the
3 issue.

4 MR. NESSIM: Can we rewind it a few seconds
5 Ms. Lafever and remove the circles as well?

6 (Video played)

7 BY MR. NESSIM:

8 Q. Pause it right there.

9 So, what just happened in the video?

10 A. I am approaching the defendant from the street and the
11 defendant turned around and is now walking the opposite
12 direction.

13 MR. NESSIM: Ms. Lafever, if you would play the video
14 for about three seconds and pause it at 1:05?

15 (Video played)

16 Q. So, what is happening right now?

17 A. I'm approaching the defendant from the sidewalk and he is
18 continuing to walk.

19 MR. NESSIM: Ms. Lafever, one more second and pause
20 it, please?

21 (Video played)

22 MR. NESSIM: Sorry, one more.

23 (Video played)

24 Q. What just happened?

25 A. The defendant started running across the street between

J365jar2

Cassase - direct

1 those two cars and I am about to grab him.

2 MR. NESSIM: Ms. Lafever, if you would continue
3 playing the video?

4 (Video played)

5 Q. And what is happening now?

6 A. At this point we are on the ground and I'm trying to grab
7 him, take his arm out from underneath him.

8 Q. Thank you.

9 Ms. Lafever, will you please pull up Government
10 Exhibit 4A? And we will play this one all the way through
11 again.

12 (Video played)

13 Q. Ms. Lafever, please rewind the video and start it again,
14 and Officer Cassase, if this time if you could narrate what the
15 video is showing?

16 A. Sure.

17 (Video played)

18 A. That's our vehicle pulling up.

19 Q. At approximately 17 seconds?

20 A. Yes.

21 That's the defendant walking on the left side right by
22 the tree now, we are in the street. He turns, I approach him
23 on the sidewalk and he starts running right there. He is down
24 on the street again.

25 Q. What are those other figures on the screen?

J365jar2

Cassase - direct

1 A. Those are people that were in the group.

2 Q. What are they doing?

3 A. They're walking away now.

4 Q. Do you remember if anyone remained from the group after you
5 arrested the defendant?

6 A. What's that?

7 Q. Do you remember if anyone was remaining from that group
8 when you arrested the defendant?

9 A. No.

10 Q. Sorry -- no, you don't remember, or no, nobody remained?

11 A. No, not that I remember that anybody was there.

12 MR. NESSIM: Your Honor, may I have one moment?

13 THE COURT: Yes.

14 (Counsel conferring)

15 BY MR. NESSIM:

16 Q. Ms. Lafever, we can take the video down. Thank you.

17 Officer Cassase, were you issued an NYPD body camera
18 at this time?

19 A. Yes.

20 Q. When were you issued a body camera?

21 A. Approximately April of 2018.

22 Q. And when did this incident take place?

23 A. May of 2018.

24 Q. And what sort of training did you receive when you got your
25 body camera?

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Cassase - direct

1 A. How you use it and when to use it.

2 Q. And, what do you understand the policy to be about when to
3 use your body camera?

4 A. When you, any time you do a car stop or certain jobs you
5 respond to, when you believe there is going to be a potential
6 crime in progress.

7 Q. Did you use a body camera in this incident with the
8 defendant?

9 A. No.

10 Q. Why not?

11 A. I -- I just got them so I wasn't used to it but when I got
12 out of the vehicle I -- I believed that he had a gun so there
13 is a certain, like, you get like a little nervous, you get an
14 adrenaline rush and I was more -- I have was focused on him, I
15 wasn't thinking about the camera at all.

16 Q. Was your body camera on you at this time?

17 A. Yes.

18 Q. Did it remain on you for the entire incident?

19 A. No. At some point it flew off.

20 Q. When did it fly off?

21 A. I believe when I went to tackle the defendant.

22 Q. Where did it end up? Do you know?

23 A. On the floor somewhere. I don't remember where it was.

24 Q. Over the course of your duties as a police officer, have
25 you ever been investigated by the CCRB?

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Cassase - direct

1 A. Yes.

2 Q. What is the CCRB?

3 A. It's the Civilian Complaint Review Board and they basically
4 investigate -- they investigate incidents they believe that
5 weren't handled properly.

6 Q. How many complaints have you had referred to the CCRB?

7 A. Two.

8 Q. And, how many were substantiated versus unsubstantiated?

9 A. One was substantiated.

10 Q. What do you remember about the substantiated incident?

11 A. I don't remember the incident at all.

12 Q. Do you know the nature of the complaint?

13 A. Yeah. They said it was a car stop.

14 Q. Approximately how many car stops have you participated in
15 over your time on the NYPD?

16 A. Hundreds.

17 Q. Approximately how many car stops have you participated in
18 in a given night on your job?

19 A. That all depends on the day, but I would say on average
20 probably about 10 to 20.

21 Q. Did you speak with the CCRB investigators in connection
22 with this complaint?

23 A. Yes.

24 Q. And what did you tell them?

25 A. I told them that I didn't remember the incident.

J365jar2

Cassase - cross

1 MR. NESSIM: One moment, your Honor?

2 THE COURT: Yes.

3 (Counsel conferring)

4 Q. And, were you truthful before the CCRB?

5 A. Yes.

6 MR. NESSIM: No further questions for this witness.

7 THE COURT: Mr. Marcus Amelkin?

8 MR. MARCUS AMELKIN: Thank you.

9 CROSS EXAMINATION

10 BY MR. MARCUS AMELKIN:

11 Q. Let's start with where the government left off with the
12 CCRB. The substantiated allegation was that you conducted an
13 illegal car search, correct?

14 A. Yes.

15 Q. And, basically, the facts of that case was that you and
16 your fellow officer ordered a man out of a car and then popped
17 his trunk and searched it?

18 MR. NESSIM: Objection, your Honor. The witness
19 testified he is not aware of the facts of the case.

20 MR. MARCUS AMELKIN: That's not --

21 THE COURT: Overruled.

22 MR. MARCUS-AMELKIN: That's a misstatement of his
23 testimony.

24 THE COURT: Overruled.

25 THE WITNESS: What was the question?

J365jar2

Cassase - cross

1 BY MR. MARCUS AMELKIN:

2 Q. I said the facts of this case was that you and the fellow
3 officers ordered the man out of the car and then popped his
4 trunk and searched it.

5 A. Okay. I don't -- I don't remember that, but.

6 Q. In preparing for your testimony did you review the CCRB
7 allegations?

8 A. No.

9 Q. You did not discuss them at all with the government?

10 A. I know it was in regards to a car stop.

11 Q. That's not the question I asked you. Did you speak with
12 the prosecutors about the allegations in the CCRB?

13 A. I was not told what the substantiated allegations were.

14 Q. Even after the allegation was substantiated against you,
15 you weren't told what you did wrong?

16 A. When I got the report a while ago I did, but not recently.

17 Q. So, at the time when you received the report you learned
18 what you did wrong and what you did wrong was an illegal car
19 search, correct?

20 A. Okay.

21 Q. I'm asking you.

22 A. Oh. As far as the report goes, yes.

23 Q. And you were punished for it?

24 A. No.

25 Q. You didn't receive any loss of vacation or anything like

J365jar2

Cassase - cross

1 that?

2 A. No.

3 Q. Okay.

4 At the time of the stop you were in the 44th, which is
5 where you are now, right?

6 A. I'm not in the 44th now.

7 Q. I'm sorry.

8 You are in a larger anti crime unit or --

9 A. I'm in Manhattan North Narcotics.

10 Q. Okay. Got it.

11 This incident took place in the 44th, though?

12 A. According to the report, yes.

13 Q. And at the time that this incident was -- the CCRB
14 occurred, were you working with the officers or sergeant that
15 you are working with now?

16 A. You mean --

17 Q. Any of the guys that were in the car when you arrested
18 Mr. Jarvis?

19 A. I don't remember the incident so I don't remember who I was
20 riding with.

21 Q. Do you remember when the incident was?

22 A. No.

23 Q. Would you like something to refresh your recollection?

24 A. Yes.

25 Q. The CCRB report would refresh your recollection as to when

J365jar2

Cassase - cross

1 it occurred?

2 A. Yes.

3 MR. MARCUS AMELKIN: Permission to approach, your
4 Honor?

5 THE COURT: Yes.

6 MR. NESSIM: Your Honor, one second. Objection. It's
7 not clear that the witness has ever seen the CCRB report.

8 THE COURT: He is using it to refresh his
9 recollection.

10 MR. NESSIM: Okay. He hadn't seen it before, from our
11 understanding.

12 THE COURT: He will read it and he will see it and
13 determine whether or not his recollection is refreshed.

14 THE WITNESS: All right.

15 MR. MARCUS AMELKIN: Thank you.

16 BY MR. MARCUS AMELKIN:

17 Q. So the substantiated complaint happened in 2017?

18 A. Correct.

19 Q. In March?

20 A. Correct.

21 Q. And, at that time, were you working with any of the same
22 officers who were in the same car the night that you arrested
23 Mr. Jarvis?

24 A. I don't remember.

25 Q. You don't remember a year and a half ago who were your

J365jar2

Cassase - cross

1 partners?

2 A. Correct.

3 Q. All right. And you told the CCRB you don't remember the
4 stop at all?

5 A. Correct.

6 Q. And your fellow officers who conducted the stop did the
7 same thing?

8 A. I'm not sure.

9 MR. NESSIM: Objection.

10 THE COURT: Overruled.

11 BY MR. MARCUS AMELKIN:

12 Q. But the CCRB determined that that was not credible?

13 A. Excuse me?

14 Q. The CCRB determined that it was not credible that all of
15 you didn't remember the stop?

16 A. Correct.

17 Q. Let's move on to the night in question.

18 There are four officers in the car?

19 A. Correct.

20 Q. The sergeant is the driver, right? Sergeant Crane?

21 A. I don't remember if he was driving or not.

22 Q. You told the government he was in the front.

23 A. Correct.

24 Q. So he was either the driver or in the front passenger seat?

25 A. Correct.

J365jar2

Cassase - cross

1 Q. And then Robert Cabrera, who is the same rank as you, was
2 the other guy in the front?

3 A. Correct.

4 Q. And you and Maria are in the back?

5 A. Maria, yes.

6 Q. Maria. Thank you.

7 Is he on right or are you on the right?

8 A. I don't remember.

9 Q. You don't remember which side of the car you were on?

10 A. Correct.

11 Q. So, you remember getting out of the car, right?

12 A. Correct.

13 Q. You don't remember if the door swung to the left or to the
14 right?

15 A. No.

16 Q. Okay.

17 So, let's start with Sergeant Crane. You have worked
18 with him before?

19 A. Yes.

20 Q. He is your immediate supervisor?

21 A. At the time, yes.

22 Q. At the time.

23 Did he help to train you at all?

24 A. I have gotten experience from him.

25 Q. And you have conducted several arrests with him before?

J365jar2

Cassase - cross

1 A. Correct.

2 Q. How many do you think?

3 A. I wouldn't be able to give you an accurate --

4 Q. Over a hundred?

5 A. I don't think it would be quite a hundred.

6 Q. Okay, but certainly more than five or 10? Somewhere?

7 A. Yeah.

8 Q. And what about Maria; how many arrests do you think?

9 A. I don't know.

10 Q. Okay.

11 And what about Cabrera?

12 A. Same. I don't know.

13 Q. Okay.

14 So it's March 4th, basically; it is after midnight?

15 THE COURT: Did you say March 4th? May 4th, isn't it?

16 MR. MARCUS AMELKIN: Sorry. You are correct, your
17 Honor. My apologies.

18 BY MR. MARCUS AMELKIN:

19 Q. It is May 4th, it is after midnight. You folks weren't
20 called to 166 and Woodycrest, correct?

21 A. Correct.

22 Q. There was no report of a crime?

23 A. Correct.

24 Q. There was no complaint about the group on the street?

25 A. Correct.

J365jar2

Cassase - cross

1 Q. And before you got out of the car you had already driven by
2 the group once; is that correct?

3 A. I don't remember.

4 Q. I'm going to show you a video of the car driving by, I
5 think that might refresh your recollection looking at 1:01:36.

6 (Video played)

7 Q. Is that your unmarked car driving by about 20 minutes
8 before you guys did the jump out?

9 A. I don't know.

10 Q. You were able to identify the car in the video when the
11 government was asking you those questions though, correct?

12 A. The vehicle that I stepped out of, yes.

13 Q. Right. And you are not able to tell if this is the same
14 car?

15 A. Correct.

16 Q. So, you see a group of gays standing outside along the
17 fence; is that right?

18 A. Correct.

19 Q. Now, are all the windows down, of the car?

20 A. My window was down.

21 Q. And, again, you don't remember if you were on the left or
22 the right side of the car?

23 A. Correct.

24 Q. Do you know if the front windows were down?

25 A. I don't remember.

J365jar2

Cassase - cross

1 Q. Now, it is early May, it is normally pretty cold. Do you
2 remember what the weather was like?

3 THE COURT: Are you testifying as a weatherman now,
4 Mr. Marcus Amelkin?

5 MR. MARCUS AMELKIN: I'm sorry, your Honor.

6 Q. Was it cold?

7 A. I don't remember.

8 Q. Were you wearing a jacket?

9 A. No.

10 Q. Okay. Long pants?

11 A. I don't remember.

12 Q. Okay.

13 A. Yes. I was wearing jeans.

14 Q. You were wearing jeans?

15 A. Yes.

16 Q. After the arrest was conducted you were interviewed for the
17 complaint report; is that right?

18 A. Say that again?

19 Q. You were interviewed by another officer in the unit so the
20 complaint report that was filled out?

21 A. I don't remember.

22 MR. MARCUS-AMELKIN: Permission to approach to refresh
23 the witness' recollection?

24 THE COURT: Yes.

25 THE WITNESS: Okay.

J365jar2

Cassase - cross

1 Q. When you fill out complaint reports in your job, it is an
2 important part of your job, yes?

3 A. Correct.

4 Q. You want them to be complete?

5 A. Correct.

6 Q. And accurate?

7 A. Correct.

8 Q. Because they're going to be used in investigations? Yes?

9 A. Correct.

10 Q. And in litigation? Is that right?

11 A. What's that.

12 Q. It is going to be used in litigation, in court?

13 A. Correct.

14 Q. And, at the time this complaint report was filled out, you
15 told your fellow officer that you observed a group of males
16 drinking on the corner of 166 and Woodycrest, correct?

17 A. If that's what it says, yes.

18 Q. Would you like the opportunity to have your recollection
19 refreshed again?

20 A. Yeah.

21 Q. Okay.

22 THE COURT: Are you going to mark that as an exhibit?

23 MR. MARCUS AMELKIN: I don't know if I will put it in.

24 If you want me to, yes, I will. I will mark that for
25 identification as Defendant's Exhibit A.

J365jar2

Cassase - cross

1 Your Honor, I move this into evidence at this time.

2 MR. NESSIM: No objection.

3 THE COURT: A is in evidence.

4 (Defendant's Exhibit A received in evidence)

5 MR. MARCUS-AMELKIN: I will pass this up to the Court,
6 if that's okay with you?

7 THE COURT: Sure.

8 BY MR. MARCUS AMELKIN:

9 Q. In the complaint report you did not mention marijuana; is
10 that correct?

11 A. Correct.

12 Q. You also filled out your memo book for this arrest?

13 A. Correct.

14 Q. And, just like the complaint report, it is important that
15 those are accurate and complete, right?

16 A. Correct.

17 Q. And, in your memo book you did not mention the smell of
18 marijuana; is that correct?

19 A. If that's what it says, yes.

20 Q. Let's just make sure we are on the same page.

21 MR. NESSIM: Your Honor there is nothing to refresh.
22 The witness hasn't said he doesn't remember yet.

23 BY MR. MARCUS AMELKIN:

24 Q. Do you remember what you wrote in your memo book.

25 A. Not offhand.

J365jar2

Cassase - cross

1 Q. Would your memo book refresh your recollection?

2 A. Yes.

3 Q. Thank you.

4 Your memo book did not mention marijuana, correct?

5 A. Not from my entry, no.

6 Q. In the memo book you did write that the group that you
7 approached was disorderly, is that right?

8 A. Yes.

9 Q. Now, disorderly conduct has a specific definition in New
10 York?

11 A. Okay.

12 Q. There are certain -- it's a law, correct?

13 A. Correct.

14 Q. And to be disorderly under the law, isn't it true that a
15 person has to have intent to cause public inconvenience,
16 annoyance, or alarm?

17 A. Yes.

18 Q. Were the men on the street fighting?

19 A. No.

20 Q. Or being unreasonably loud?

21 A. Not that I heard.

22 Q. Were they disturbing anyone else on the street?

23 A. Not that I know of.

24 Q. Now, you said you saw them drinking, right?

25 A. Yes.

J365jar2

Cassase - cross

1 Q. And you said you smelled marijuana?

2 A. Yes.

3 Q. Did you see bottles of liquor?

4 A. I don't remember.

5 Q. Maybe just cups?

6 A. Yes, I seen cups. I don't remember if it was bottles lying
7 around.

8 Q. Did the cups have any alcoholic beverage insignia on them?

9 A. I don't remember.

10 Q. You don't remember what the cups looked like?

11 A. I know it was white cups. I don't know if others had
12 labels on them.

13 Q. Could you smell the alcohol from the car?

14 A. No.

15 Q. So, you didn't know when you approached the group that
16 there was alcohol in the cups, correct?

17 A. Correct.

18 Q. Did you see Mr. Jarvis holding a cup?

19 A. I don't remember.

20 Q. Did you see him holding any bottles of alcohol?

21 A. I don't think so.

22 Q. Is it a crime to stand next to somebody else on the street
23 who has an open container?

24 A. No.

25 Q. Let's just talk about the marijuana. Did you see

J365jar2

Cassase - cross

1 Mr. Jarvis holding marijuana?

2 A. No.

3 Q. Did you see him smoking it?

4 A. No.

5 Q. And is it a crime to stand next to somebody on the street
6 who is smoking marijuana?

7 A. No.

8 Q. Now, was anybody arrested for the marijuana?

9 A. No.

10 Q. And was anyone else in the group arrested at all?

11 A. No.

12 Q. Was anyone ticketed, received a pink summons for open
13 container?

14 A. No.

15 Q. Did you recover any of the alcohol? Did you voucher any of
16 the alcohol?

17 A. No.

18 Q. How about the marijuana?

19 A. No.

20 Q. Nothing illegal or criminal was vouchered except for the
21 gun, right?

22 A. Correct.

23 Q. Did you take any photos of the alcohol?

24 A. No.

25 Q. Photos of the marijuana?

J365jar2

Cassase - cross

1 A. No.

2 Q. Did anybody's body cam pick up the cups or the weed?

3 A. I'm not sure.

4 THE COURT: Excuse me. What do you mean cops of the
5 week?

6 MR. MARCUS-AMELKIN: Cups or the weed.

7 THE COURT: Oh. I misheard.

8 MR. MARCUS-AMELKIN: That's my fault.

9 BY MR. MARCUS AMELKIN:

10 Q. Did any of the alleged marijuana get field tested?

11 A. No.

12 Q. And you didn't take any of the cups back to confirm that
13 there was alcohol in them?

14 A. Correct.

15 Q. So, let's pull up 3A. Thank you. This is already in
16 evidence, it is the government's exhibit.

17 (Video played)

18 THE COURT: This is the body cam video?

19 MR. MARCUS AMELKIN: 4A. I apologize.

20 THE COURT: 4A or 5A?

21 MR. MARCUS AMELKIN: 5. The government can play it.
22 It is always collegial during hearings.

23 (Video played)

24 BY MR. MARCUS AMELKIN:

25 Q. We have watched it now a couple times but I think it will

J365jar2

Cassase - cross

1 be good if you watch it once more and we will discuss it
2 without breaking it down again.

3 (Videofile played)

4 Q. Is it not just Mr. Jarvis walking here but multiple other
5 people walking?

6 A. I see one person, yes.

7 Q. And at that point right there, you guys are already on the
8 ground; is that right?

9 A. Correct.

10 Q. Thank you.

11 So, as you drove up, did all four officers exit the
12 car?

13 A. I'm not sure. Once I saw the defendant, I was pretty
14 focused on him and I didn't see much of what was going on.

15 Q. Would you all mind taking down the video? Thank you so
16 much.

17 As an soon as you exited did you announce yourself as
18 the police?

19 A. Yes.

20 Q. Did you display a badge?

21 A. I don't remember.

22 Q. You had your badge on you, I imagine?

23 A. Yes. Usually I have it around my neck. I don't remember
24 if it was out or not.

25 Q. Okay. And the group dispersed the when you exited car; is

J365jar2

Cassase - cross

1 that right?

2 A. Yeah. I was focused on the defendant, I wasn't paying
3 attention to the people.

4 Q. You just watched video, right?

5 A. Yes.

6 Q. It looks like people got up who were sitting, right?

7 A. Correct.

8 Q. And at least another person walked south on Woodycrest?

9 A. Correct.

10 Q. And is it common for police to clear sidewalks?

11 A. What do you mean by that?

12 Q. I mean if there is a group congregated on sidewalks, is it
13 common for the police to step out and say *Move along, let's*
14 *disperse*.

15 A. It does happen.

16 Q. And, at first you noticed Mr. Jarvis walking away, right?

17 A. Correct.

18 Q. And he was not running?

19 A. Correct.

20 Q. Now, you testified that he had adjusted something in his
21 waistband, right?

22 A. Correct.

23 Q. And that was the first thing that tipped you off that maybe
24 he had a weapon?

25 A. Yeah.

J365jar2

Cassase - cross

1 Q. In fact, there was no indication whatsoever that Mr. Jarvis
2 had committed a crime in your mind before you saw that; is that
3 right?

4 A. You can say that.

5 Q. Can you say that?

6 A. Yes.

7 Q. Okay.

8 And, you testified that it looked like he moved the
9 item from his waist to his side; is that right?

10 A. Yes, slightly. I wouldn't say he moved it all the way but
11 adjusted it, yes.

12 Q. A slight movement. Okay.

13 Now, you were interviewed by the federal agent in this
14 case for the complaint; is that right?

15 A. What was that?

16 Q. Were you interviewed by the federal agent sitting at the
17 government's table for the federal complaint in this case?

18 A. Yes.

19 Q. And, did you review the complaint when Mr. Jarvis was
20 brought to federal court?

21 A. I don't remember.

22 Q. Did you mention to the agent that Mr. Jarvis adjusted
23 something in his pants to the federal officer?

24 A. I don't remember.

25 Q. But it was not included in the complaint; is that right?

J365jar2

Cassase - cross

1 A. I'm not sure.

2 Q. Would the complaint refresh your recollection?

3 A. Yes.

4 THE COURT: What's the question, Mr. Marcus Amelkin?

5 MR. MARCUS AMELKIN: If he told the federal agent
6 about the waistband adjustment because it is not included in
7 the complaint.

8 MR. NESSIM: Your Honor, the complaint wouldn't
9 illuminate that point.

10 THE COURT: So you say.

11 MR. NESSIM: There are notes of the interview. If it
12 is not in the complaint is beyond this officer's scope of
13 knowledge.

14 MR. MARCUS AMELKIN: Your Honor, the government is
15 testifying.

16 THE COURT: If that's an objection, Mr. Nessim, it is
17 overruled.

18 MR. MARCUS AMELKIN: Thank you.

19 BY MR. MARCUS AMELKIN:

20 Q. In the federal complaint does it mention that Mr. Jarvis
21 adjusted his waistband?

22 A. No.

23 Q. Let's go back to the pants. Did you see anything sticking
24 out of his waistband?

25 A. I don't. I don't remember that.

J365jar2

Cassase - cross

1 Q. You don't remember if anything was sticking out?

2 A. Correct.

3 Q. But you didn't see the butt of a gun, right?

4 A. I don't believe so.

5 Q. And, you didn't see a bulge in his pants?

6 A. That I don't remember.

7 Q. You don't remember if you saw a bulge?

8 A. No.

9 Q. So, really the only thing we know for sure is that you saw
10 a slight adjustment in his pants, right?

11 A. Correct.

12 Q. Now, he was wearing a black hooded sweatshirt?

13 A. Okay.

14 Q. Was he?

15 A. I don't remember.

16 Q. Were you one of the officers who brought him into the
17 precinct?

18 A. He was transported back to the precinct. I don't
19 remember -- I didn't bring him back, someone else brought him
20 back.

21 Q. I am going to show you a -- hold on a second.

22 (Counsel conferring)

23 Q. I am going to show you one of the body cam cameras from
24 inside the precinct. I am not sure who is shooting this but I
25 am pretty sure you are standing next to him?

J365jar2

Cassase - cross

1 A. Okay.

2 Q. Is there a way we can do it with sound?

3 (Video played)

4 Q. Was that you talking?

5 A. Yes.

6 Q. Thank you. Do you mind rewinding it for a second?

7 (Video played)

8 Q. Did you hear in the video Mr. Jarvis say: *I'm wearing Nike*
9 *pros.*

10 A. No, but.

11 Q. Okay. Mr. Gosrani, do you mind replaying it?

12 (Video played)

13 Q. Did you hear that then?

14 A. Yes.

15 Q. I'm going to show you what's marked for identification
16 Defendant's B. Officer, are you familiar with these types of
17 pants? Like in your personal life?

18 A. Yeah.

19 Q. And is it, does it say on the pants that this is Nike pro
20 or Nike PR?

21 A. Yes.

22 Q. And, after seeing the video, do you remember that these
23 were the type of pants that Mr. Jarvis was wearing under his
24 jeans the night of his arrest?

25 A. I don't remember seeing it.

J365jar2

Cassase - cross

1 Q. I'm going to show you the video again because you kind of
2 see the pants toward the end. See if that refreshes your
3 recollection.

4 A. Okay.

5 (Video played)

6 Q. Did you ask him how many pants you got on, bro?

7 A. Yes.

8 Q. Thank you. Go ahead.

9 (Video played)

10 Q. After seeing a brief glimpse of those pants in the video,
11 does it refresh your recollection that he was wearing these
12 type of leggings on the night of his arrest?

13 A. I mean, I'm not saying by the look of it, but --

14 MR. MARCUS-AMELKIN: Your Honor, I ask to move
15 Defendant's Exhibit B into evidence.

16 THE COURT: Are those the pants that he was wearing?

17 MR. MARCUS AMELKIN: It is a depiction of them from
18 the Nike website.

19 MR. NESSIM: Your Honor, we object on relevance
20 grounds. It is not clear these were the pants he is wearing,
21 there is no foundation for it. He apparently said Nike in the
22 video.

23 THE COURT: Sustained. Sustained.

24 MR. MARCUS AMELKIN: Thank you, your Honor.

25 BY MR. MARCUS AMELKIN:

J365jar2

Cassase - cross

1 Q. But in the video he did say that he was wearing Nike Pro
2 leggings, correct?

3 A. That is correct.

4 Q. And he was wearing a pair of jeans over those Nike pros,
5 correct, because you took his belt from the jeans?

6 A. Yes.

7 Q. And, underneath the Nike Pros he was wearing boxer shorts
8 as he said in the video?

9 A. Okay.

10 Q. Was he wearing boxer shorts?

11 A. I don't remember. If that's what he said.

12 Q. And, in your experience with these types of pants just as a
13 consumer, as a person, you know that they're tight athletic
14 pants, correct?

15 A. Correct?

16 Q. And they hug your body in a way that compresses?

17 A. Correct.

18 Q. Now, you can say that they're skin tight, right?

19 A. Correct.

20 Q. So, let's go back to the arrest.

21 You saw him adjust something in his waistband, as you
22 said, and you told him to stop?

23 A. Correct.

24 Q. Instead, he walked away?

25 A. Correct.

J365jar2

Cassase - cross

1 Q. And then, in a matter of seconds, he was on the ground; is
2 that right?

3 A. Correct.

4 Q. Maybe, just from having watched the video now three times,
5 would you agree that from the time you stepped out of the car
6 until the time Mr. Jarvis was on the ground it was less than 10
7 seconds?

8 A. I think it was more than that, but.

9 Q. Would you like to watch it again?

10 A. Sure.

11 THE COURT: Do you have a question,
12 Mr. Marcus Amelkin?

13 MR. MARCUS AMELKIN: We are going to show him the
14 video, your Honor. I'm sorry. I asked him how long between he
15 stepped out of the car until Mr. Jarvis was tackled.

16 THE COURT: Well, he won't be able to tell unless you
17 have the time up.

18 MR. MARCUS AMELKIN: Sorry.

19 Would the government mind showing theirs again? I'm
20 sorry. I think it starts at 40 seconds, right?

21 (Video played)

22 THE COURT: Is that your car arriving, officer?

23 THE WITNESS: I don't have anything on my screen.

24 THE COURT: He doesn't have anything on his screen.

25 MS. CHOI: Your Honor, I noticed this before. You may

J365jar2

Cassase - cross

1 want to try to hit the power button on the right-hand side of
2 the monitor.

3 THE COURT: Do you have 34 seconds, Officer?

4 THE WITNESS: Yes.

5 THE COURT: We are at 34 seconds.

6 MR. MARCUS AMELKIN: Thank you, your Honor.

7 (Video played)

8 BY MR. MARCUS-AMELKIN:

9 Q. So the car is stopping now, right?

10 A. Correct.

11 (Videofile played)

12 Q. At that point is he on the ground at 1:10, right?

13 A. Correct.

14 Q. So, we are talking about 15, 20 seconds at most, right?

15 A. Correct.

16 Q. Thank you.

17 And thank you to the government for displaying the
18 video.

19 So, to the extent that he sped up it was only for a
20 couple steps before he was on the ground, right?

21 A. Correct.

22 Q. And, did you notice the adjustment of the waistband while
23 you were in the car?

24 A. Yes.

25 Q. So you saw him adjust his waistband from the back seat of

J365jar2

Cassase - cross

1 the car?

2 A. Yes.

3 Q. So, from the back seat of the car to -- now, there were
4 cars -- I apologize.

5 There were cars between you and Mr. Jarvis parked on
6 the street, correct?

7 A. Correct.

8 Q. And this was at night?

9 A. Correct.

10 Q. And you are in the back seat of the car?

11 A. Correct.

12 Q. And how, approximately, far were you from him when you saw
13 this adjustment?

14 A. The car from the street, so maybe like 10 feet.

15 Q. And you didn't run out of the car, correct?

16 A. No.

17 Q. There was no emergency at that point?

18 A. Well, it was more for my safety, I would say.

19 Q. But there wasn't -- at that point you didn't know that he
20 had a gun, right?

21 A. No, I didn't know.

22 Q. And there was no urgency at that point? He was walking
23 away, right?

24 A. I wouldn't say there wasn't any urgency.

25 Q. But when you stepped out of the car you were fully intent

J365jar2

Cassase - cross

1 on stopping him, right?

2 A. Correct.

3 Q. And, he basically had taken only a few steps before you
4 tackled him, right?

5 A. Correct.

6 Q. And it was a pretty full tackle, right? Did you wrap your
7 arms around him?

8 A. Yes. From what I remember, yeah.

9 Q. You wrapped up both of his arms, right?

10 A. Yeah. I believe so.

11 Q. Because he landed on his face, right?

12 A. From what I remember, yes.

13 Q. Because he couldn't -- you had his hands wrapped up so he
14 couldn't use them to stop his fall, right?

15 A. From what I remember, yes.

16 Q. And, at that point you were on top of him and other
17 officers came to assist?

18 A. Correct.

19 Q. And one of them searched, basically, while the other one
20 cuffed or did you cuff him?

21 A. I don't remember if I cuffed him or not.

22 Q. And, once he is handcuffed, then the gun is taken out from
23 his underwear, right? Or from under the Nike pros?

24 A. I don't he remember which one came first.

25 Q. At that point, though, once you tackled him, Mr. Jarvis was

J365jar2

Cassase - cross

1 not free to go, right?

2 A. I think -- what was that?

3 Q. He was not free to go at that point, correct?

4 A. Correct.

5 Q. He was under arrest?

6 A. Correct.

7 Q. And you tackled him with the intention of arresting him,
8 right?

9 A. Well, to stop him.

10 Q. You told the grand jury in this case, right, that you took
11 him to the ground because you believed he had a gun, right?

12 A. Correct.

13 Q. And was Mr. Jarvis' face injured when you tackled him?

14 A. What's that?

15 Q. Was his face injured when you tackled him?

16 A. I believe so.

17 Q. Now, once the arrest was conducted, did you voucher any of
18 Mr. Jarvis' clothes?

19 A. I don't remember.

20 Q. Would the voucher sheets refresh your recollection?

21 A. Yes.

22 MR. MARCUS AMELKIN: Permission to approach?

23 THE COURT: Yes. Yes.

24 Q. There is a bunch of them, they go front to back?

25 A. What was the question?

J365jar2

Cassase - cross

1 Q. If you vouchered any clothes.

2 A. The only thing I see here are gloves.

3 Q. So, to the best of your recollection you didn't voucher any
4 of his clothes besides some gloves?

5 A. Correct.

6 Q. And, in your experience, when a person is transported from
7 the precinct to Rikers Island, does the property clerk at the
8 jail take the clothes until that person is bailed or released?

9 MR. NESSIM: Objection. Foundation.

10 MR. MARCUS AMELKIN: I asked him his experience as an
11 NYPD officer.

12 THE COURT: If he knows.

13 Do you know, Officer?

14 THE WITNESS: I don't know.

15 BY MR. MARCUS AMELKIN:

16 Q. That's fine.

17 Just a few more questions about the body cam
18 situation. When you arrested him you were wearing a body cam,
19 correct?

20 A. Yes.

21 Q. And the month prior to this arrest you were trained how to
22 use that camera, right?

23 A. Correct.

24 Q. And, you knew where the on and off button was, right?

25 A. Correct.

J365jar2

Cassase - cross

1 Q. And you know, under patrol guide policy, that it is
2 mandatory, under the NYPD rules, to turn it on prior to
3 engaging in police action such as this one; is that right?

4 A. Correct.

5 Q. And that would be turning it on before you exited the car,
6 right?

7 A. In some situations, yes.

8 Q. In this situation?

9 A. Yes.

10 Q. But you only turned it on after Mr. Jarvis was under
11 arrest, right?

12 A. I didn't turn mine on at all as far as I know. It fell
13 off.

14 Q. When you are speaking in the video with him in the
15 precinct, that's another officer's camera, that's not yours?

16 A. I'm not sure. I don't remember.

17 Q. But, none of the four officers in the car, as far as you
18 know, were able to capture the approach or the tackle; is that
19 right?

20 A. As far as I know, correct.

21 MR. MARCUS AMELKIN: Thank you. No further questions.

22 Oh. Let me check with my client to make sure.

23 (Defendant and counsel conferring)

24 MR. MARCUS AMELKIN: Thank you, Officer.

25 Thank you, your Honor.

J365jar2

Cassase - redirect

1 THE COURT: Mr. Nessim?

2 REDIRECT EXAMINATION

3 BY MR. NESSIM:

4 Q. Officer Cassase, Mr. Marcus Amelkin asked you questions
5 about the complaint report, he showed you a copy of it. Do you
6 remember that?

7 A. Correct.

8 Q. And I mean the precinct report back in the station. Do you
9 remember that?

10 A. The complaint report you are talking about?

11 Q. Sorry?

12 A. The complaint report?

13 Q. I believe it is in evidence, the complaint report, just the
14 one page.

15 A. Okay.

16 Q. A few lines?

17 A. Yes.

18 Q. Did you review this report before it was filed in the case
19 file?

20 A. No.

21 Q. Do you know if the report contains all of the information
22 that you had about the incident?

23 A. No, I don't know that.

24 Q. And, do you know if it even contains all the information
25 that you told the officer who took your statement?

J365jar2

Cassase - redirect

1 A. No.

2 Q. Do you remember Mr. Marcus Amelkin showed you a copy of the
3 criminal complaint in this case, the federal criminal
4 complaint?

5 A. Yes.

6 Q. Had you ever seen that before?

7 A. No.

8 Q. You never saw it so you never reviewed it?

9 A. No.

10 Q. Do you remember coming down to interview with the U.S.
11 Attorney's office in connection with this case?

12 A. Yes.

13 Q. Do you remember approximately when that interview was?

14 A. No.

15 Q. You don't remember?

16 A. No.

17 Q. Would something refresh your recollection?

18 A. Yes, the --

19 MR. NESSIM: Your Honor, may I approach the witness?

20 THE COURT: Yes, you may.

21 MR. MARCUS AMELKIN: Your Honor, I believe that if
22 Mr. Nessim is showing him notes from their meeting he should
23 only look at it as for the date and not to refresh his
24 recollection as to what he said to the government at those
25 meetings.

J365jar2

Cassase - redirect

1 THE COURT: I disagree with that.

2 The objection is overruled.

3 BY MR. NESSIM:

4 Q. Does that refresh your recollection as to when you first
5 met with the government?

6 A. Yes.

7 Q. When was that?

8 A. May 17, 2018.

9 Q. Thank you. You can put that aside.

10 Do you remember that first meeting with the government
11 where you mentioned smelling marijuana?

12 A. I don't.

13 Q. Would something refresh your recollection?

14 A. Yes.

15 MR. NESSIM: Can I direct the officer to his notes?

16 THE COURT: Yes.

17 MR. MARCUS AMELKIN: Your Honor, how could
18 Mr. Nessim's notes of the meeting refresh his recollection what
19 he said to him?

20 THE COURT: Almost anything can be used to refresh a
21 person's recollection. Could be the New York Times, could be a
22 Topps bubble gum card.

23 MR. NESSIM: Your Honor, if can I direct him?

24 THE COURT: Yes.

25 BY MR. NESSIM:

J365jar2

Cassase - redirect

1 Q. Does that refresh your recollection?

2 A. Yes.

3 Q. What, if anything, did you tell the government about
4 smelling marijuana on May 17?

5 A. That I could smell it and my window was down.

6 Q. Do you remember telling the government anything about
7 seeing the defendant adjust his waistband?

8 A. I don't remember.

9 MR. NESSIM: Your Honor, may I refresh the witness'
10 recollection?

11 THE COURT: Yes.

12 Q. Does that refresh your recollection?

13 A. Yes.

14 Q. What did you tell the government about adjusting the
15 waistband, if anything?

16 A. That I saw him adjust the waistband.

17 Q. Do you remember, did you testify in the Bronx grand jury on
18 this case?

19 A. Yes.

20 Q. Do you remember approximately when that testimony was?

21 A. No.

22 Q. Would something refresh your recollection?

23 A. Yes.

24 MR. NESSIM: Your Honor, may I approach the witness?

25 THE COURT: Yes, you may.

J365jar2

Cassase - redirect

1 BY MR. NESSIM:

2 Q. Does that refresh your recollection on when your testimony
3 in the Bronx grand jury was?

4 A. Yes.

5 Q. When was it?

6 A. May 15, 2018.

7 Q. Did you testify in the Bronx grand jury about smelling
8 marijuana from the group?

9 A. I don't remember.

10 Q. Would something refresh your recollection?

11 A. Yes.

12 MR. NESSIM: Your Honor, may I?

13 THE COURT: Yes.

14 Q. Does that refresh your recollection?

15 A. Yes.

16 Q. What, if anything, did you tell the Bronx grand jury about
17 smelling marijuana?

18 A. That I smelled marijuana.

19 Q. Where?

20 A. Coming from the area where the group was.

21 Q. Do you remember telling the Bronx grand jury anything about
22 the defendant adjusting an object in his waistband?

23 A. No.

24 Q. Would something refresh your recollection?

25 A. Yes. Sorry.

J365jar2

Cassase - redirect

1 Q. Does that refresh your recollection?

2 A. Yes.

3 Q. What, if anything, did you tell the Bronx grand jury about
4 the defendant adjusting an object in his waistband?

5 A. That I saw him adjusting an object in his waistband.

6 Q. Do you remember seeing the defendant adjust an object in
7 his waistband?

8 A. Yes.

9 THE COURT: Where were you when you saw him making the
10 adjustment in the waistband? Were you in the car?

11 THE WITNESS: Yes.

12 THE COURT: Before you got out of the car -- before
13 you got out of the car you had seen him adjust something in his
14 waistband, correct?

15 THE WITNESS: Yes.

16 THE COURT: That was about, approximately 10 feet
17 away?

18 THE WITNESS: Yes.

19 THE COURT: How did you see it? There is cars
20 parked --

21 THE WITNESS: In between the cars.

22 THE COURT: You saw it in between the cars?

23 THE WITNESS: Yes.

24 THE COURT: You were on the far side or the near side?

25 THE WITNESS: I don't remember.

J365jar2

Cassase - redirect

1 THE COURT: Okay.

2 BY MR. NESSIM:

3 Q. Did you continue to see him adjust his waistband at any
4 point after you exited the car?

5 THE COURT: When he was walking.

6 THE WITNESS: When he went to turn around I think he
7 grabbed it again.

8 THE COURT: Oh.

9 BY MR. NESSIM:

10 Q. Mr. Marcus Amelkin asked you some questions about whether
11 you recovered cups or marijuana, whether you issued any arrest
12 or summonses for that?

13 A. Correct.

14 Q. You said did you not?

15 A. Correct.

16 Q. When you approached the group -- do you approach groups on
17 the street corner in your times as a police officer?

18 A. Yes.

19 Q. And what is sort of the range of possible outcomes of those
20 approaches?

21 A. I don't understand.

22 Q. When you seek to approach a group of people who are on the
23 street corner, what generally takes place?

24 A. It all depends. Sometimes we ask them to disperse,
25 sometimes we write summonses. Sometimes there is, you know, it

J365jar2

Cassase - redirect

1 escalates.

2 Q. Mr. Marcus Amelkin asked you if you saw Mr. Jarvis holding
3 a cup or smoking marijuana and you said no.

4 A. Correct.

5 Q. Why did you stop Mr. Jarvis?

6 A. Because I believed that he had a weapon.

7 Q. Why did you believe he had a weapon?

8 A. Really, the totality of everything. The area where he was
9 when he first looked at me, the look in his face when he
10 started walking away, when he grabbed his waistband, when I
11 told him to stop he didn't stop.

12 It was really everything put together.

13 Q. And the -- when you stopped Mr. Jarvis did you care about
14 the cups or the marijuana?

15 A. No.

16 Q. Why?

17 A. Because I was worried about my safety and the fact that I
18 believed he had a gun.

19 Q. There was questions about the pants or underpants that
20 Mr. Jarvis might have been wearing.

21 A. Okay.

22 Q. Do you remember those questions?

23 A. Yes.

24 Q. You said you don't remember the pants he was wearing or
25 underpants?

J365jar2

Cassase - redirect

1 A. No.

2 Q. Do you remember him adjusting the waistband?

3 A. Yes.

4 Q. When you approached Mr. Jarvis, what did you say to him?

5 A. I said: *Police, hold up.*

6 Q. How many times do you remember saying that?

7 A. At least twice.

8 Q. And what did he do in response?

9 A. He said *for what?* and he started running.

10 MR. MARCUS AMELKIN: Your Honor, objection. This was
11 covered in direct.

12 THE COURT: Overruled.

13 BY MR. NESSIM:

14 Q. Ms. Lafever, if we could pull up, I know we have seen it
15 several times, Government Exhibit 5A, and we will turn to the
16 1:05 mark.

17 (Video played)

18 Q. What just happened in the video?

19 A. The defendant was running and I grabbed him.

20 Q. And what happened to the group?

21 A. They dispersed.

22 Q. Was most of the group still there at the time you were
23 approaching the defendant?

24 A. Yes.

25 Q. What do you remember about the lighting of the street at

J365jar2

Cassase - redirect

1 this time?

2 A. There were lights.

3 Q. You say it was well lit?

4 A. I wouldn't say well lit but it was pretty lit, fairly lit.

5 MR. NESSIM: One moment, your Honor.

6 (Counsel conferring)

7 MR. NESSIM: Nothing further for this witness.

8 THE COURT: Before you are excused, Officer --

9 MR. MARCUS AMELKIN: Your Honor, may I ask a couple
10 questions?

11 THE COURT: No.

12 Before you are excused, when you were sitting in the
13 car and you saw Jarvis, according to your testimony, adjust his
14 waistband --

15 THE WITNESS: Correct.

16 THE COURT: -- did you say there is a gun? Did you
17 tell your fellow officers there is a gun?

18 THE WITNESS: I -- I didn't say -- I don't remember
19 what I said but I didn't say that there was a gun but did I say
20 something that directed -- I didn't say that there was a gun
21 but I did mention something to my, my fellow officer in the
22 back seat with me and I don't remember what I said to him but
23 it was to direct our attention to him.

24 THE COURT: You don't remember what you said?

25 THE WITNESS: No, sir.

J365jar2

Cassase - recross

1 THE COURT: Mr. Marcus Amelkin, do you want to ask a
2 question?

3 MR. MARCUS AMELKIN: If you don't mind.

4 THE COURT: I don't mind. You were interrupting me
5 before.

6 MR. MARCUS AMELKIN: I didn't know you were asking
7 me -- oh, you have more questions?

8 THE COURT: No, I don't. Go ahead.

9 MR. MARCUS AMELKIN: Thank you, your Honor.

10 RECROSS EXAMINATION

11 BY MR. MARCUS AMELKIN:

12 Q. Before you testified before the Bronx grand jury at that
13 point you had met with the prosecutor, is that right?

14 A. Yes.

15 Q. And prepared for your testimony?

16 A. Yes.

17 Q. When you filled out your memo book you had not met yet with
18 a prosecutor, right?

19 A. I don't remember.

20 Q. Do you normally fill out your memo book on the day,
21 contemporaneously with an arrest?

22 A. Shortly after I usually fill that out, yes.

23 Q. And seeing the complaint report that is in evidence,
24 normally that is filled out almost immediately, right?

25 A. The complaint report that was prepared by my or the

J365jar2

Cassase - recross

1 interview?

2 Q. The interview.

3 A. I don't -- I'm not sure.

4 Q. May I refresh your recollection with the date? I am
5 grabbing the report.

6 THE COURT: You are refreshing his recollection as to
7 what?

8 MR. MARCUS AMELKIN: The date that the interview
9 occurred.

10 THE COURT: The Defendant's Exhibit A, which is in
11 evidence, says the activity date is May 4th at the time of 8:30
12 in the morning.

13 MR. MARCUS AMELKIN: Thank you, your Honor.

14 BY MR. MARCUS AMELKIN:

15 Q. Now, at the time of this arrest it is 1:30 in the morning
16 basically, right?

17 A. Approximately, yes.

18 Q. And it is pitch black out other than street lights, right?

19 A. I believe so.

20 Q. And you are in the back of a police car?

21 A. Correct.

22 Q. But you don't remember which side of the car you are on,
23 right?

24 A. Correct.

25 Q. And you are looking through multiple parked cars, correct,

J365jar2

Cassase - recross

1 to get to the sidewalk?

2 A. Well, I can see between the cars.

3 Q. But there were multiple cars parked?

4 A. There were cars parked; that is correct.

5 Q. Including a larger SUV I think we saw in the photograph,
6 right?

7 A. Okay.

8 Q. At that point you were able to see the first adjustment?

9 A. Yes.

10 Q. And, you testified during redirect that he might have
11 grabbed it again when he turned around; is that right?

12 A. I believe so.

13 Q. But you don't know for sure, correct?

14 A. Correct. Well, when I started running, he grabbed it.

15 Q. Once the -- the one or two seconds before he hit the ground
16 you are saying he grabbed it?

17 A. Correct.

18 Q. At the time that you were approaching Mr. Jarvis, the other
19 members of the group were already walking, correct?

20 A. When I initially walked up to him?

21 Q. Yes.

22 A. Yes.

23 Q. They were walking away, correct?

24 A. What's that?

25 Q. They were walking away, correct?

J365jar2

Maria - direct

1 A. Correct.

2 Q. And when you asked Mr. Jarvis to stop, did he say to you,
3 *For what?*

4 A. The -- right before he ran, yes.

5 Q. And did you answer him?

6 A. No.

7 MR. MARCUS-AMELKIN: Thank you, your Honor.

8 Thank you, Officer.

9 THE COURT: You are excused.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 THE COURT: Call next witness.

13 MR. NESSIM: Thank you, your Honor. The government
14 calls Officer Daniel Maria.

15 DANIEL MARIA,

16 called as a witness by the Government,

17 having been duly sworn, testified as follows:

18 THE COURT: Please sit down, Mr. Maria.

19 Okay, Mr. Nessim.

20 DIRECT EXAMINATION

21 BY MR. NESSIM:

22 Q. Good morning, Officer Maria.

23 A. Good morning.

24 Q. Where do you work?

25 A. 44th Precinct in the NYPD in the south Bronx.

J365jar2

Maria - direct

1 Q. The 44th Precinct is in the south Bronx?

2 A. Yes.

3 Q. How long have you been with the NYPD?

4 A. About six years.

5 Q. What is your title?

6 A. Police officer.

7 Q. Do you work in a particular unit?

8 A. I work in anti-crime.

9 Q. How long have you been in anti-crime?

10 A. About three years.

11 Q. What are your duties and responsibilities -- generally
12 speaking, what are your duties and responsibilities as an
13 anti-crime officer?

14 A. We proactively address violent street crimes such as
15 robberies, burglaries, people with firearms, wanted people.
16 Pretty much anything that surrounds violence.

17 Q. You mentioned firearms. Have you been involved in firearms
18 arrests?

19 A. Yes.

20 Q. Approximately how many times have you been involved in
21 arrests related to firearms possession?

22 A. At least 20, 25 times.

23 Q. Directing your attention to the evening of May 3rd into the
24 morning of May 4, 2018, were you working that night?

25 A. Yes.

J365jar2

Maria - direct

1 Q. What shift were you working?

2 A. I was working 2130 by 0605 hours.

3 Q. Were you working with other officers that night?

4 A. Yes.

5 Q. Who were you working with?

6 A. Officer Cassase, Officer Cabrera, and Sergeant Crane.

7 Q. What were you wearing?

8 A. Plain clothes.

9 Q. What were the other officers wearing?

10 A. Plain clothes as well.

11 Q. How were you traveling?

12 A. We were in an unmarked car.

13 Q. Generally speaking, what were you doing on that shift that
14 night?

15 A. We were just patrolling.

16 Q. Patrolling what area?

17 A. The west side of the precinct -- the 44th Precinct.

18 Q. Do you remember where in the car you were sitting?

19 A. I was sitting in the back seat of the car.

20 Q. Do you remember where in the back seat?

21 A. Not specifically. I remember I was in the back seat of the
22 vehicle.

23 Q. Directing your attention to approximately 1:00 a.m. on the
24 morning of May 4th, where were you at that time?

25 A. I was on the corner of West 166th Street and Woodycrest

J365jar2

Maria - direct

1 Avenue.

2 Q. And what, if anything, happened at that time during your
3 shift?

4 A. We approached the corner of 166 and Woodycrest just past
5 166 Street. We observed a large group of people. Some of them
6 were drinking, some of them were smoking, and there was a heavy
7 odor of marijuana in the air.

8 Q. Ms. Lafever, if you would pull up Government Exhibit 1,
9 which is in evidence?

10 Using this map, can you identify the approximate area
11 where you came upon this group?

12 A. Yes. So, West 166th Street is right here and we were
13 traveling northbound on Woodycrest Avenue just past 166 Street.

14 Q. Ms. Lafever, if you would circle that approximate area?

15 Is that the direction your car was moving?

16 A. Yes.

17 Q. Which corner did you say it was?

18 A. It would be the east-northeast corner.

19 Q. And what, if anything, did you know about rates of crime in
20 this neighborhood at this time?

21 A. That area that surrounds Nelson playground, 165 to 166
22 Woodycrest and Nelson Avenue is a shooting prone location and
23 it's also a location that's known for narcotics sales.

24 Q. When you say shooting prone, what does that mean?

25 A. There is higher instance of shooting in that location than

J365jar2

Maria - direct

1 other areas of the precinct so we are directed to patrol those
2 areas more heavily.

3 Q. Ms. Lafever, if you could pull up Government Exhibit 2,
4 please?

5 Officer Maria, what does this show?

6 A. That shows the corner of West 166 and Woodycrest Avenue.

7 Q. Does this show the approximate area where you observed this
8 group of people?

9 A. Yes.

10 Q. Using this photo, can you identify roughly where that group
11 was standing?

12 A. The second car on the left that you see in the screen, to
13 the third car. That approximate area.

14 Q. Approximately how many people did you observe?

15 A. About 7 to 15 people, I would say.

16 Q. And you mentioned an odor of marijuana. How were you able
17 to smell that?

18 A. The windows of our car were down.

19 Q. What do you decide to do once you saw this group of people?

20 A. We decided to get out of the car and address the group, let
21 them know that it was illegal to drink and smoke on the
22 sidewalk.

23 Q. And, why did you decide to do that?

24 A. It's part of our job to address groups of people.

25 Sometimes when large groups gets together and drink, later on

J365jar2

Maria - direct

1 there can be problems in the night, and also it is illegal to
2 drink on the sidewalk in public.

3 Q. In your experience, how does addressing groups of people
4 generally play out?

5 MS. SHROFF: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: In general, we will get out of the car
8 and, with most groups, the people, we will tell them it is
9 illegal to drink on the sidewalk and they can't stay there, and
10 usually they'll understand and move on. Occasionally, if they
11 act a different way, they will either be summonsed or arrested.

12 BY MR. NESSIM:

13 Q. So, you got out of the car to approach this group of
14 people. What did you notice as you approached?

15 A. I noticed a gentleman that was leaning on one of the cars
16 and he was rolling a blunt, like a marijuana in a cigar paper.
17 I started to walk towards him to talk to him about that, and at
18 that time I heard Officer Cassase calling out to someone else
19 and it was the defendant moving southbound on Woodycrest
20 Avenue. And he called out to him twice and at that point I
21 changed -- I started walking on the sidewalk in attempt to get
22 ahead of him.

23 Q. You mentioned the defendant. Do you recognize the
24 individual that you saw in the courtroom today?

25 A. Yes.

J365jar2

Maria - direct

1 Q. Can you identify him by where he is sitting and using an
2 item of clothing he is wearing?

3 A. Yes. He is -- wearing black. He is in the second row,
4 wearing black, in the middle.

5 MR. NESSIM: Your Honor, let the record reflect that
6 the witness has identified defendant?

7 THE COURT: Mr. Marcus Amelkin?

8 MR. MARCUS AMELKIN: Ms. Shroff's witness, your Honor.

9 MS. SHROFF: No objection, your Honor.

10 THE COURT: The officer recognized the defendant
11 Mr. Jarvis.

12 BY MR. NESSIM:

13 Q. So, Officer Cassase saying something drew your attention to
14 Mr. Jarvis?

15 A. Yes.

16 Q. What happened next?

17 A. He called out to him. He said something of the nature of
18 *hey, stop or, you know, hold up a second.* Mr. Jarvis was
19 walking southbound. He went back towards Officer Cassase, he
20 looked kind of frantic, he was walking very quickly. I felt
21 like he was going to run so I stepped up on the sidewalk and
22 started to move quickly towards him. As that happened, he
23 quickly -- the defendant quickly changed direction and started
24 running to approximately where the two vehicles where the
25 circle is on the screen right now, he tried to get out between

J365jar2

Maria - direct

1 those two cars, at which point Officer Cassase tackled him from
2 behind.

3 Q. How far would you say the defendant got once he started
4 running?

5 A. Not more than 10, 15 feet, max.

6 Q. And, what happened next?

7 A. As Officer Cassase tackled him, I noticed that the
8 defendant had his hand in the right side of his waistband
9 underneath his body. I got up to the right side of his body
10 and reached underneath his -- reached underneath and I felt the
11 handle of a firearm inside his waistband and his hand on top of
12 it.

13 Q. And using this exhibit on the screen, can you identify
14 approximately where the defendant was located on the ground?

15 A. Yeah.

16 Just past where the cars are, the street-side tires of
17 the car onto the street just a little bit.

18 Q. Is that roughly where that circle is being drawn?

19 A. Yeah.

20 Q. So you said as he fell what did you notice?

21 A. His hand -- his right hand was underneath his body in his
22 waist area.

23 Q. And what happened once he was on the ground?

24 A. When he was on the ground, he began to squirm around. My
25 co-workers were trying to get a hold of him. When I reached

J365jar2

Maria - direct

1 under his body I felt the firearm. I said -- I called out
2 "gun" to them to let them know that there was a gun in his
3 waist, at which point I was able to pull his hand out from
4 under his waistband and one of my co-workers was able to grab
5 his arm and hold it still while I recovered the firearm.

6 Q. So, you pulled his arm out and then you went back to
7 recover the firearm?

8 A. Yes.

9 MS. SHROFF: Objection.

10 MR. NESSIM: Withdrawn, your Honor.

11 THE COURT: Okay.

12 BY MR. NESSIM:

13 Q. What about the defendant made you think to reach underneath
14 him?

15 A. It was the way that his arm was tucked into his waist that
16 made me think that he had a firearm there.

17 Q. What kind of gun was it that you recovered?

18 A. It was a Glock semi-automatic pistol.

19 Q. What did you do with the gun?

20 A. Handed it to Officer Cassase.

21 Q. What happened next?

22 A. Next a vehicle arrived to transport the defendant back to
23 the precinct and I went back to the precinct.

24 Q. Was the defendant placed under a rest?

25 A. Yes.

J365jar2

Maria - direct

1 Q. When was he placed under arrest?

2 A. The time he was handcuffed on the ground.

3 Q. And when was that?

4 A. At that time on scene.

5 Q. Were you issued an NYPD body camera at this time?

6 A. Yes.

7 Q. When did you receive the camera?

8 A. In April -- about a month prior to this incident.

9 Q. Did you receive training in connection with the camera?

10 A. Yes.

11 Q. Ms. Lafever, we can take down this photo.

12 What sort of training did you receive?

13 A. We went to the academy for one tour and they gave a
14 presentation and a practical walk-through how to use the
15 camera.

16 Q. What do you understand to be the department policy on using
17 body cameras?

18 A. When you are going to take enforcement action or when you
19 are responding to specific radio runs you will activate the
20 camera.

21 Q. Did you activate the camera in this incident with the
22 defendant?

23 A. I attempted to activate mine.

24 Q. What happened?

25 A. The plastic button on the front of my camera works with a

J365jar2

Maria - direct

1 magnet on a plastic slide. So, when I slid mine down, I slid
2 it down too quickly and it actually popped off. When it popped
3 off, the camera never activated.

4 Q. At what point did you attempt to activate your camera?

5 A. At some point in time when he was running.

6 Q. What did you need do to repair your camera?

7 A. I called the ITB help desk and the gentleman on the phone
8 walked me through how to reattach the button, and he informed
9 me that if the button was broken -- if the slide was broken I
10 would have to bring the camera in to One Police Plaza.

11 However, I was able to reattach the button and he just issued
12 me a ticket number for that.

13 Q. What is ITB?

14 A. Information Technology Bureau.

15 Q. I am going to show you what is already in evidence as
16 Government Exhibit 3A.

17 Ms. Lafever if you could pull up that video? Is the
18 audio up? Thank you. So, we will watch it one time through
19 and then we will rewind it.

20 (Video played)

21 Q. Thank you.

22 Why is the first few seconds of the video silent?

23 A. When you activate a camera, it loops constantly 30 seconds
24 but that 30 seconds doesn't have audio. So, when you activate
25 the camera, you get 30 seconds of video prior to the

J365jar2

Maria - direct

1 interaction.

2 Q. So, let's replay this video and why don't you let us know
3 what is happening in the video as it is happening.

4 A. Sure.

5 (Video played)

6 A. These are my co-workers wrestling for the hands of
7 Mr. Jarvis. Officer Cassase on the right, that's myself right
8 there.

9 (Video played)

10 A. Here I recover the firearm from under his waist and they're
11 handcuffing him at this time.

12 Q. Play it.

13 (Video played)

14 Q. Can you identify when the handcuffs are being applied?

15 A. Right now. You can actually hear the handcuffs going on.

16 Q. Was that after you pulled the gun out?

17 A. They were securing his arms while I pulled the gun out, and
18 once the gun was out they were handcuffing him.

19 Q. Keep playing.

20 (Video played)

21 Q. What are you doing there?

22 A. Here I noticed that my camera wasn't working because when
23 you activate it, it starts to blink green so when you look down
24 you saw a green light. I looked down, I saw a red light after
25 everything was done. And, I noticed that the button on the

J365jar2

Maria - direct

1 front of my camera snapped off.

2 Q. We can keep going.

3 (Video played)

4 A. There you can hear Officer Cassase's voice and saying he
5 doesn't know where his camera is and Sergeant Crane is
6 responding that it fell.

7 Q. We can take down that video. Thank you, Ms. Lafever.

8 Officer Maria, over your experience as a police
9 officer, have you ever had complaints referred to the CCRB?

10 A. Yes.

11 Q. How long did you say you have been a police officer?

12 A. Six years.

13 Q. And how many complaints have been referred to the CCRB
14 regarding you?

15 A. I think about --

16 Q. To your knowledge.

17 A. About three.

18 Q. And how many have been substantiated, to your knowledge?

19 A. Two.

20 Q. Let's start with the first one. Do you remember the
21 approximate date of the incident in question?

22 A. No. It was several years ago.

23 Q. And, do you remember the circumstances of the incident?

24 A. Yeah.

25 I was in a -- I was standing in a bodega and I was

J365jar2

Maria - direct

1 watching a video for a robbery that had been committed. I was
2 with the lieutenant and another officer and I interviewed the
3 store clerk. And then, while my co-workers were watching the
4 video and then we kind of switched roles and I started watching
5 the video and they were interviewing the store clerk, while I
6 was watching the video the officer and lieutenant ran out the
7 door after somebody. I chased closely behind them, hearing my
8 lieutenant saying, *stop that guy, stop that guy*.

9 Essentially the lieutenant had identified him as a
10 perpetrator for a crime. I ran up and I grabbed ahold of him
11 and the subject of that CCRB, he actually resisted arrest. I
12 was to stop him, he resisted arrest, we had to handcuff him.

13 We brought him back to the precinct. He was not
14 positively identified for that crime that the lieutenant saw
15 him as, that guy. I did think he had a similar jacket as to
16 the other person, the person that they did identify -- I mean,
17 as to the person that was wanted for the crime. But, he wasn't
18 positively identified and I was substantiated for abuse of
19 authority for stopping the subject.

20 Q. Were there any other substantiated allegations that you
21 know of in connection with that incident?

22 A. No.

23 Q. Did you speak with the CCRB about that incident?

24 A. Yes.

25 Q. Were you truthful in your conversations with them?

J365jar2

Maria - direct

1 A. Yes.

2 Q. Was there any recommended process in response to that?

3 A. Yes. I was retrained.

4 Q. For how long?

5 A. I went for a day in the in-service tactical unit in
6 Rodman's Neck.

7 Q. What about the second incident, approximately when did that
8 take place?

9 A. I don't recall the exact date but it was also years ago.

10 Q. What happened?

11 A. I was working with one other co-worker who identified a
12 person as doing what he believed to be a hand-to-hand drug
13 transaction and this was a person that he had previously
14 arrested for a felony amount narcotics. We approached him, one
15 of the women offered a bag holding it up and saying to me, *You*
16 *can search the bag, I am not doing anything, we don't have*
17 *drugs.* I don't recall whether or not I actually looked into
18 that bag and there was another bag on the ground with a beer in
19 it and I looked inside of that bag.

20 One of the women had a seizure during this interaction
21 so I called an ambulance for her. I walked out in the street,
22 waited for the ambulance to come because where we were it
23 wasn't visible from the street, it was in a court yard area.
24 Flagged the ambulance over, we got her in the ambulance and
25 that was the end of the interaction.

J365jar2

Maria - cross

1 Q. What, to your knowledge, was the outcome of the CCRB?

2 A. Substantiated for abuse of authority again, I believe for
3 searching the bag.

4 Q. Was there any sort of discipline or anything against you?

5 A. CCRB recommended a schedule A command discipline and I
6 received counseling from my commanding officer and I didn't
7 hear anything after that.

8 MR. NESSIM: Your Honor, may I have one moment?

9 THE COURT: Yes.

10 (Counsel conferring)

11 MR. NESSIM: Nothing further, your Honor.

12 THE COURT: Mr. Marcus Amelkin? Ms. Shroff?

13 MS. SHROFF: Thank you, your Honor. May I?

14 THE COURT: Ms. Shroff, please.

15 CROSS EXAMINATION

16 BY MS. SHROFF:

17 Q. Officer Maria, you started the shift on May 4th; is that
18 correct?

19 A. That's not correct.

20 Q. May 3rd at night?

21 A. Yes.

22 Q. And it went into May 4th?

23 A. Yes.

24 Q. And you started with a team, correct?

25 A. Yes.

J365jar2

Maria - cross

1 Q. And the team gathered at the precinct before you took off
2 for the shift, correct?

3 A. Yes.

4 Q. You had a meeting with the team, correct?

5 A. Sergeant holds roll call, yes.

6 Q. Correct; but you also had a sub-meeting with the people
7 that were in your car, correct? You talked with them about
8 what you were going to do on the shift?

9 A. The Sergeant gives out directions on which car will go
10 where that night.

11 Q. Right; and after the Sergeant gives out directions, you
12 talk to the people who are going to be in the car to decide
13 what to do, correct?

14 A. I don't really understand the question.

15 Q. Did you have a tactical plan at all for the shift?

16 A. The sergeant will give us directions. Maybe like sometimes
17 we will patrol the precinct in general, sometimes we will have
18 directions like one car will patrol the west side of the
19 precinct and another car will patrol the east side. I don't
20 recall a particular direction given that night, however, we
21 were supposed to give special attention to the west side area
22 of the precinct.

23 Q. Yes, we talked about that, but my question is whether the
24 four of you who were in the car had any kind of meeting about
25 what you were going to do on that shift.

J365jar2

Maria - cross

1 A. No.

2 Q. So, your testimony on direct was the four of you were in a
3 car, correct?

4 A. Yes.

5 Q. An unmarked police car?

6 A. Yes.

7 Q. And you frequently go into the same neighborhood in that
8 unmarked police car, correct?

9 A. Yes.

10 Q. And you understand that unmarked police cars are generally
11 made by people who live in that community, correct?

12 A. Some people make it.

13 Q. It is made, correct?

14 A. Some people make it.

15 Q. Okay.

16 MR. NESSIM: Your Honor, objection. I don't
17 understand what the question is.

18 MS. SHROFF: He understood it though.

19 MR. NESSIM: For the record, what do you mean by
20 "made?"

21 THE COURT: I think that the officer understood.
22 Objection is overruled.

23 BY MS. SHROFF:

24 Q. Now, you made several stops before you came to the arrest
25 of Mr. Jarvis, correct?

J365jar2

Maria - cross

1 A. Yes.

2 Q. And you wrote down each of those stops in your memo book,
3 correct?

4 A. Yes.

5 Q. And, do you recall the stops as you sit here today?

6 A. I recall we were -- we made one arrest early that night
7 but, specifically, I don't know.

8 Q. Do you recall what time your shift started?

9 A. 2130.

10 Q. What is your first entry? Do you remember?

11 A. No. I don't recall.

12 Q. Let me hand you your memo book in case that's going to
13 refresh your recollection and that would be Defendant's Exhibit
14 C.

15 A. Yes.

16 Q. Now, would you take a look, sir, do you recall your car
17 stop at 167 and Gerard?

18 A. Yes.

19 Q. And at what time was that?

20 A. I'm sorry. Are you asking me if I recall it?

21 Q. Yes.

22 A. I don't.

23 Q. Does your memo book refresh your recollection about that
24 stop?

25 A. Yes.

J365jar2

Maria - cross

1 Q. And, does the memo book indicate to you a notation about
2 what you saw at that scene or smelled at that scene?

3 A. Yes.

4 Q. And, did you make a notation of that in your notebook?

5 MR. NESSIM: Objection, your Honor. He said he
6 doesn't recall the stop.

7 THE COURT: That's the purpose of a memo book, isn't
8 it?

9 MR. NESSIM: But he said it doesn't refresh his
10 recollection of he stop. He is reading from the memo book. If
11 I understand his answer.

12 THE COURT: The objection is overruled.

13 BY MS. SHROFF:

14 Q. You know the importance of a memo book, correct?

15 A. Yes.

16 Q. It is to make contemporaneous notes, correct?

17 A. I'm sorry?

18 Q. It is to make contemporaneous notes, correct?

19 A. I'm not sure of the word you used. Make what type of
20 notes?

21 THE COURT: You are supposed to make them at the time
22 the incident occurred, at or about the time of the incident.

23 THE WITNESS: At the incident yes.

24 BY MS. SHROFF:

25 Q. That's why you carry your memo book with you, correct?

J365jar2

Maria - cross

1 A. Yes.

2 Q. And you know that your memo book could be used in a
3 criminal case, correct?

4 A. Yes.

5 Q. It could refresh your recollection when testifying,
6 correct?

7 A. Yes.

8 Q. And it helps you recall, does it not, that at 2240 you
9 smelled marijuana at that scene, correct?

10 A. Correct. Unless, like I said, I don't specifically
11 remember this car stop. I have here in my notes from the car
12 stop so I can tell you what happened based on those notes, but
13 it wasn't a very memorable car stop, clearly, because I don't
14 see myself there right now.

15 Q. Thank you for that clarification. My only question was
16 your memo book reflects that you smelled marijuana at that
17 stop, correct?

18 A. Yes, it does.

19 Q. Let's move to the next one which is 2246, correct?

20 A. Yes.

21 Q. Do you recall that at all?

22 A. That I do.

23 Q. And you recall what exactly about that stop?

24 A. We were driving down the block and this guy kept looking
25 back at us and then he stuffed something in the wheel well of a

J365jar2

Maria - cross

1 car.

2 Q. And you know that as being marijuana, correct?

3 A. I know because I ran over there --

4 Q. Sir, my only question was do you recall that as being
5 marijuana? Yes or no.

6 A. Marijuana was recovered from the wheel well of the car.

7 Q. Right, and you noted that in your notebook, correct?

8 A. Yes.

9 Q. Let's move to the next one, shall we? The next one has a
10 notation that there was a disorderly group, correct?

11 A. What time do you have there?

12 Q. 2353.

13
14 THE COURT: What time?

15 Q. 2353; correct?

16 A. Okay.

17 Q. Do you recall that, sir?

18 A. No.

19 Q. And let's move to the next stop that you have at 0010. Do
20 you recall that stop?

21 A. No.

22 Q. Does that memo book refresh your recollection that it was
23 in front of 1343 Webster Avenue and you had a strong odor of
24 marijuana?

25 A. Yes.

J365jar2

Maria - cross

1 Q. Okay.

2 MR. NESSIM: The witness just said he doesn't remember
3 the stop. Objection.

4 THE COURT: This is in his memo book. It is precisely
5 designed to refresh his recollection.

6 MR. NESSIM: But he just said he doesn't remember.

7 THE COURT: Well, okay.

8 The objection is overruled.

9 BY MS. SHROFF:

10 Q. And then we come to this stop, correct?

11 A. Okay. Yes.

12 Q. And this stop is at West 166 and Woodycrest, correct?

13 A. At zero -- yes.

14 Q. And you write down disorderly group observed, correct?

15 A. Yes.

16 Q. No indication that you observed marijuana, correct?

17 A. Disorderly group; that's what makes them disorderly.

18 Q. I didn't ask you that, sir. I asked you if there is any
19 notation here that you smelled marijuana.

20 A. No.

21 Q. There is no notation here that you saw anybody drinking.

22 A. No.

23 Q. Now, you testified that you smelled marijuana, correct?

24 A. Yes.

25 Q. And in response to that you did what?

J365jar2

Maria - cross

1 A. Stepped out of the vehicle.

2 Q. Because you smelled marijuana you stepped out of the
3 vehicle?

4 A. Because there was a group drinking on the sidewalk and
5 smoking marijuana.

6 Q. And at that time you were supposed to activate your body
7 camera, correct?

8 A. At that time --

9 Q. Yes or no.

10 A. At that time I was not -- I didn't fully intend on taking
11 enforcement action.

12 Q. Sir, you were stepping out of your car, correct?

13 A. Yes.

14 Q. You're a police officer, correct?

15 A. Yes.

16 Q. You were going to approach a group, correct?

17 A. Correct.

18 Q. You were going to tell the group what to do in your
19 authority as a police officer, correct?

20 A. Correct.

21 Q. You weren't going up to them as a friend, correct?

22 A. Correct.

23 Q. So you were going to tell a group to follow your
24 instructions as a police officer, correct?

25 A. Correct.

J365jar2

Maria - cross

1 Q. And if they didn't follow your instructions your intent, as
2 you testified on direct, was either to issue a summons or
3 arrest them, correct?

4 A. If the situation escalated, yes.

5 Q. So, if the situation was such that they remained on the
6 corner standing there smoking marijuana, you would have done
7 nothing?

8 A. I would have directed them to not do that, and depending on
9 their reaction to me, I would have either taken enforcement
10 action and activated my body camera or not taken enforcement
11 action.

12 Q. So, your testimony as a police officer is that the only
13 time you activate your camera is after you have decided to
14 actually take an action?

15 A. In this --

16 Q. Is that your testimony?

17 A. In this instance, yes.

18 Q. Sir, you are trained on the body camera, correct?

19 A. Correct.

20 Q. You are told how to use it, correct?

21 A. Correct.

22 Q. You are told when to turn it on, correct?

23 A. Correct.

24 Q. And you are not told how to turn it on in each different
25 incident, correct? You are given a set of rules, correct?

J365jar2

Maria - cross

1 A. That's not entirely correct.

2 Q. That's not correct?

3 A. We are told specific instances when we are to activate it
4 and when we are not.

5 Q. Right, and you are to activate it when you are taking
6 actions as a police officer so that there is memorialization of
7 what you do, correct?

8 A. Not in every instance. There are some instances where you
9 don't activate it when you are still acting as a police
10 officer.

11 Q. Really?

12 A. Yes.

13 Q. So, the NYPD police department trains you on when not to
14 activate it and tells you, when you are approaching a group of
15 people smoking marijuana, don't activate the camera?

16 A. Depends on if I'm going to take enforcement action or if
17 the situation escalates.

18 Q. When you approached that group, one guy was leaning against
19 a car according to you, correct?

20 A. Correct.

21 Q. Rolling a blunt according to you, correct?

22 A. Correct.

23 Q. He didn't move when you approached, correct?

24 A. Correct.

25 Q. He kept leaning, correct?

J365jar2

Maria - cross

1 A. Correct.

2 Q. Kept rolling that blunt, correct?

3 A. Correct.

4 Q. And you approached him, correct?

5 A. I was walking towards him.

6 Q. Sir, yes or no: And you approached him, correct?

7 A. I was walking towards him, yes.

8 Q. And you are walking towards the person breaking the law,
9 correct?

10 A. Correct.

11 Q. And your testimony is as an NYPD officer you are, at that
12 point, not sure you are going to take enforcement action?

13 A. Correct.

14 Q. That is your testimony?

15 A. Yes.

16 Q. So you would have had a person smoking a blunt on the
17 street just walk on away, correct?

18 A. He was rolling the blunt.

19 Q. Sir, yes or no.

20 A. Can I explain it?

21 Q. No.

22 THE COURT: No. You have to answer the question yes
23 or no.

24 THE WITNESS: No. I was not going to necessarily
25 issue him a summons.

J365jar2

Maria - cross

1 BY MS. SHROFF:

2 Q. Sir, the question calls for a yes or no answer.

3 A. Can you repeat the question, please?

4 Q. Sure.

5 You are an NYPD officer approaching a man rolling up a
6 blunt and it is your testimony that you were not going to take
7 enforcement action against that person at 1:24 in the morning?
8 Is that your testimony?

9 A. Not necessarily.

10 Q. Not necessarily.

11 So, your testimony is that you would have let that man
12 walk away had he just put away a blunt? Is that your
13 testimony?

14 A. I have that discretion.

15 Q. I didn't ask you if you had that discretion. My question
16 is, as an NYPD police officer, when you are approaching a group
17 of 10 to 12 people, one of whom is clearly smoking a blunt or
18 rolling a blunt, your testimony is you were not sure you were
19 going to take enforcement action.

20 Is that your testimony?

21 A. Yes.

22 Q. And could you tell me, sir, what is the crime area that you
23 were patrolling at that time?

24 A. I'm sorry?

25 Q. You testified on direct, did you not, that you were

J365jar2

Maria - cross

1 specifically told this is a high-crime area, correct?

2 A. Yes.

3 Q. And you were worried about all the violence that would come
4 in that area, correct?

5 A. Correct.

6 Q. And you were in fact very concerned about the escalating
7 rights rates of violence in that area, correct?

8 A. Correct.

9 Q. And it is your testimony that, nonetheless, at 1:30 in the
10 morning, you did not think you were going to need enforcement
11 action stepping out into a group of 10 to 12 people gathered
12 there.

13 Is that your testimony?

14 A. Correct.

15 Q. I see.

16 By the way, when you are trained on a body camera,
17 sir, are you told that when you approach a group of 10 to 12
18 people you should turn on the camera?

19 A. Not necessarily. I don't necessarily have to activate the
20 video camera at that time.

21 Q. And you didn't think it was prudent of you to activate that
22 camera at that time? That's your testimony, correct?

23 A. Correct.

24 Q. And you did not think it prudent of you for you to record
25 your conversation with a man on the street who is clearly

J365jar2

Maria - cross

1 breaking the law, correct?

2 A. Correct.

3 Q. And you made that determination having been substantiated
4 twice between 2016 and 2018 for failure to properly follow
5 procedures, correct?

6 A. Correct.

7 Q. And you were substantiated not on one incident but on two
8 incidences, correct?

9 A. Correct.

10 Q. And the first incident was for failure to fill out a proper
11 form, correct?

12 A. No. The first instance was for stopping someone.

13 Q. Well, no. That's not why you were written up, right? You
14 were written up because you inappropriately stopped someone,
15 correct?

16 A. Written up. You mean substantiated?

17 Q. Yes. Complained about, substantiated.

18 A. For stopping someone, yes.

19 Q. No.

20 Did the CCRB chastise you for stopping someone? Is
21 that how you process the CCRB substantiation?

22 A. Well, the paper that I received in department mail
23 stated --

24 Q. The paper in the department mail stated that you simply
25 stopped a person and that is why you had a CCRB complaint

J365jar2

Maria - cross

1 substantiated? Is that right?

2 A. The paperwork stated substantiated, Officer Maria stopped
3 Ralph Yearde.

4 Q. It didn't say you abused your authority?

5 A. Yes. That was the claim, was the abuse of authority.

6 Q. No, no. Wasn't that claim substantiated, sir?

7 A. Yes.

8 Q. You were told that you abused your authority, correct?

9 MR. NESSIM: Your Honor, objection. The witness
10 doesn't have foundation to comment on CCRB process how they
11 make complaints, review complaints.

12 THE COURT: He went through the process. He can
13 comment if he knows. It is fair commentary.

14 THE WITNESS: I'm sorry. You have to repeat the
15 question, please.

16 BY MS. SHROFF:

17 Q. Sure.

18 You were told you abused your authority, correct?

19 A. That's what CCRB accused me of.

20 Q. CCRB is not in the accusing business, that's the community,
21 right? You were accused by a human being, an individual, of
22 mistreating him, correct?

23 A. Correct.

24 Q. Of misidentifying him based on racial features, correct?

25 A. I don't recall if it was based on some type of racial

J365jar2

Maria - cross

1 thing.

2 Q. All right. Let's help you out. Let's see if your CCRB
3 helps you --

4 By the way, you have received two substantiated
5 complaints, sir, correct?

6 A. Correct.

7 Q. And in your mind, sir, is that something in your
8 professional life that would cause you concern?

9 A. No.

10 Q. It would not cause you concern that somebody substantiated
11 misconduct on your job?

12 A. No.

13 Q. It does not cause you concern that you are sitting in a
14 federal court having to relive somebody having said that you
15 mistreated them on the job as an NYPD police officer?

16 A. It is unfortunate but it doesn't concern me.

17 Q. It does not concern you professionally?

18 A. No.

19 Q. Would you take a look at the report, sir? Let's start with
20 the first page. Does that refresh your recollection that
21 Police Officer Maria, there was a substantiated complaint
22 against you for searching somebody's bag, a woman's bag Luz
23 Tirado.

24 Does that refresh your recollection?

25 A. This is the first time I have seen this paperwork.

J365jar2

Maria - cross

1 Q. That's nice to know but my question is whether that
2 refreshes your recollection.

3 A. Where, exactly, are you indicating?

4 Q. Take a look at the only name that pops out under number F.
5 Police Officer Daniel Maria. That's you, correct?

6 A. Under F? States an officer -- C, okay. So C.

7 Q. Do you also recall that you were written up as other
8 misconduct for failure to prepare a memo book entry as
9 required?

10 A. Yes; for one of the incidents I was.

11 Q. And you were also written up for failure to fill out a stop
12 and frisk paper, correct?

13 A. Is that here on this page?

14 Q. Flip the page over and I think it is there.

15 A. Okay. I don't see it on the other side of the page.

16 MR. NESSIM: Objection, your Honor. I think the
17 question is whether the witness remembers, not whether the
18 paper says it.

19 THE COURT: Yes. Do you remember?

20 THE WITNESS: I don't remember that.

21 BY MS. SHROFF:

22 Q. Officer Maria, do you recall that there were three women
23 involved in this incident?

24 A. I recall at least two women.

25 Q. I see.

J365jar2

Maria - cross

1 And you recall these women and you recall testifying
2 in front of the CCRB, do you?

3 A. Yes.

4 Q. And, do you recall that the CCRB noted that you had no
5 recollection of exactly what you did?

6 A. Certain instances I didn't recollect as I also don't
7 recollect them now. The whole incident -- I don't remember
8 parts of the incident.

9 MS. SHROFF: Your Honor, may I ask that the witness be
10 instructed to answer the question asked as opposed to the
11 question --

12 THE COURT: I think he is doing a good job,
13 Ms. Shroff.

14 MS. SHROFF: Thank you.

15 BY MS. SHROFF:

16 Q. Officer Maria, do you recall that you also told the CCRB
17 investigators that you didn't recall what any of your
18 colleagues were doing during that stop?

19 A. That's correct.

20 Q. And you testified to them that you could not recall even
21 what your sergeant was doing, correct?

22 A. My sergeant wasn't on scene.

23 Q. Okay, but you recall that you could not recall any conduct
24 that any of your colleagues took during that day, correct?

25 MR. NESSIM: Your Honor, can we clarify what

J365jar2

Maria - cross

1 Ms. Shroff is asking about? Which incident?

2 MS. SHROFF: I think your witness is understanding my
3 questions.

4 MR. NESSIM: I think you are mischaracterizing. Which
5 stop are you talking about?

6 BY MS. SHROFF:

7 Q. Do you understand the question, sir?

8 A. I believe I understand the incidents you are talking about.

9 Q. Thank you.

10 So, could you tell me, please, if you told the CCRB
11 that you recalled not what any of your colleagues did during
12 that incident?

13 A. I told them that I walked out into the street to flag an
14 ambulance because I was concerned for the woman's health. So,
15 I could not testify to things that I didn't see.

16 Q. You told them that you did not recall if you placed your
17 own hands in the woman's bag, correct?

18 A. Correct.

19 Q. You told them that you could not recall if the police
20 officer searched any other person's bags, correct?

21 A. Correct.

22 Q. And you did not recall searching anybody else on the scene,
23 correct?

24 A. Correct.

25 Q. And you did not say that you had stepped out on any street

J365jar2

Maria - cross

1 to the CCRB, correct?

2 A. That's false. I did tell them a that.

3 Q. I see. Let's just keep going.

4 You also testified, did you not, that you did nothing
5 wrong during this incident, correct?

6 A. Correct.

7 Q. And the CCRB did not believe you, correct?

8 A. I can't testify to what they believe.

9 Q. Really?

10 Did you ever learn tat CCRB had found Ms. Tirado to be
11 credible?

12 A. No.

13 Q. Did you learn that the CCRB had found Ms. Melendez to be
14 credible?

15 A. No.

16 Q. Well, did you draw that inference that the CCRB had found
17 them to be credible when the complaint was substantiated
18 against you?

19 MR. NESSIM: Your Honor, objection. Ms. Shroff is
20 characterizing the nature of CCRB investigations.

21 THE COURT: Sustained. Sustained.

22 BY MS. SHROFF:

23 Q. The CCRB substantiated it Ms. Tirado's claim, correct?

24 A. I actually don't recall which person Ms. Tirado was.

25 Q. The person's whose bag you inappropriately searched was

J365jar2

Maria - cross

1 Ms. Tirado?

2 A. Now you are saying things that I don't know to be true or
3 not.

4 Q. Take a look at page 1.

5 A. Okay.

6 Q. Again.

7 Section C. Ms. Tirado, correct?

8 A. That's not Ms. Tirado, page 1, Section C. Okay, that's a
9 different --

10 Q. I am only asking you about Ms. Tirado, sir.

11 A. Okay.

12 Q. Does that help you refresh your recollection?

13 A. This is the first time I'm seeing this form as well.

14 Q. Sir, when you prepared for your direct testimony here did
15 you talk with this prosecutor?

16 A. Yes.

17 Q. How many times?

18 A. I would say two or three times.

19 Q. And you spent how many hours with him, all told?

20 A. Probably three hours.

21 Q. During that time you didn't talk about your CCRB
22 complaints?

23 A. Yes, we did.

24 Q. You talked about them in detail, correct?

25 A. We talked about them briefly.

J365jar2

Maria - cross

1 Q. Right; and he reviewed them with you, correct?

2 A. We didn't review them. We spoke about my experience.

3 Q. You spoke about your experience.

4 Did he tell you he had the CCRB recommendation against
5 you?

6 A. No.

7 Q. Did you ask him if he had the CCRB recommendation against
8 you?

9 A. No, I did not.

10 Q. Let's talk about the second incident when you were in a
11 bodega and you said that your lieutenant asked you to follow
12 somebody out. Okay?

13 A. The first incident?

14 Q. Well, you call it first but whichever way you want.

15 That was also in 2016, correct?

16 A. Correct.

17 Q. And that was in --

18 A. Actually, I don't recall the specific year.

19 Q. Well, take a look at the document. It should tell you that
20 it was in I think September of 2016; is that right?

21 MR. NESSIM: Which document?

22 Q. Do you have the document before you, sir?

23 A. Yes. This is the document from 2016.

24 Q. Okay, and that's --

25 THE COURT: What document is it, for the record?

J365jar2

Maria - cross

1 MS. SHROFF: 3501-005.

2 Q. Do you have that in front of you?

3 A. Yes.

4 Q. Does that refresh your recollection, sir, that there was a
5 complaint against you by a Mr. Yearde. Y-E-A-R-D-E?

6 A. Yes.

7 Q. That was in 2016?

8 A. Yes.

9 Q. That's not even two years ago, right? About two years ago?

10 A. It is more than two years ago.

11 THE COURT: Almost three years ago.

12 Q. '16, about three years ago?

13 THE COURT: Three. 19 minus 16 is three.

14 A. Yes.

15 Q. At that time you had three complaints against you, correct?

16 By 2016 there were three complaints against you, correct?

17 A. I couldn't tell you a specific amount. Probably three. I
18 don't know.

19 Q. Out of the three two were substantiated, correct?

20 A. Correct.

21 Q. And on this one --

22 A. Actually, this was the initial one so at this time this was
23 the only complaint against me, I believe. This was, I believe,
24 my first.

25 Q. Okay. So, you should recall it well because it was your

J365jar2

Maria - cross

1 first?

2 A. I had nothing substantiated against me at this time.

3 Q. Until September of the same year.

4 A. This was my first substantiated CCRB, this incident we are
5 talking about.

6 Q. So you recall it well, right? It was your first?

7 A. I do not recall it well.

8 Q. Okay.

9 A. It was years ago.

10 Q. So, you recall that you testified for this one as well,
11 correct?

12 A. Correct.

13 Q. And you told them that Mr. Yearde resembled the
14 perpetrators, just that he is a black man in that age range
15 with athletic build, correct?

16 A. No.

17 Q. Take a look at page 5 and see if that refreshes your
18 recollection on the top paragraph.

19 A. It states that I had testified to that but these aren't my
20 words verbatim.

21 Q. They put them in quotes, correct?

22 A. They put them in quotes. I don't recall stating it
23 specifically like that.

24 Q. But you don't recall the complaint in the first place,
25 correct?

J365jar2

Maria - cross

1 A. Correct. So, specifically exactly what happened? No, I
2 can't recall to you.

3 Q. In fact you don't recall it according to your
4 cross-examination testimony, correct?

5 A. That's not correct.

6 MR. NESSIM: Your Honor, objection. Can Ms. Shroff
7 clarify what her question is?

8 Q. Moving forward, sir --

9 I will move along, your Honor.

10 THE COURT: Thank you.

11 Q. Do you recall that the CCRB investigation concluded that
12 there was no resemblance between the man you stopped and the
13 man on the video?

14 Do you recall that?

15 A. No, I don't.

16 Q. And, do you recall that the CCRB found your testimony to
17 not be credible?

18 A. No. I'm not aware of that.

19 Q. You are not aware of that?

20 A. No.

21 Q. And, do you recall the CCRB noting that your explanation of
22 the similarity between the video and the person you arrested
23 was simply not credible?

24 MR. NESSIM: Your Honor, objection.

25 This is misconstruing the document, the witness'

J365jar2

Maria - cross

1 testimony, the CCRB's role.

2 THE COURT: Sustained.

3 MS. SHROFF: Your Honor, I'm going to ask then that
4 the document be entered into evidence because that's exactly
5 what the document says.

6 MR. NESSIM: Objection.

7 THE COURT: Sustained.

8 What's the point here, Ms. Shroff? Because he is
9 found incredible before the CCRB he is incredible here?

10 MS. SHROFF: Well, no. I can certainly explain at
11 side bar, your Honor, or we can leave it for argument, but I do
12 think that the government's objection is that I am
13 mischaracterizing the CCRB investigation.

14 THE COURT: Why don't you leave it for argument.

15 MS. SHROFF: I'm sorry?

16 THE COURT: I said why don't you leave it for
17 argument. You might as well leave it for argument.

18 MS. SHROFF: Okay.

19 BY MS. SHROFF:

20 Q. Both of those complaints were substantiated, correct?

21 A. The complaints that we have spoken about today?

22 Q. Yes.

23 A. Yes.

24 Q. Now, getting back to the day in question, you testified,
25 did you not, that it is your knowledge that the area at 166 is

J365jar2

Maria - cross

1 a high-crime area, correct?

2 A. Correct.

3 Q. And you testified that you were aware of this how?

4 A. Quite often -- well, my first couple years in the precinct
5 I walked the foot post in that area as part of Operation
6 Impact.

7 Q. So that's just your opinion, correct?

8 A. No. It was the direction of our commanding officers.

9 Q. So, did the commanding officer tell you by what percentage
10 there was more crime in that area?

11 A. No.

12 Q. Did anybody in the NYPD tell you at what times of the day
13 there was higher crime?

14 A. No.

15 Q. Nobody told you what specifically to look for, just that it
16 is higher crime, correct?

17 A. No; that we experience more shootings in that area.

18 Q. You have experienced shootings in that area?

19 A. The precinct.

20 Q. I am asking you; if you have experienced any shootings in
21 that area. No, right?

22 A. On the west side of the precinct? Yes, I have.

23 Q. Your testimony sitting here today is that you have
24 experienced shooting in that area, correct?

25 A. We have to be specific. Me specifically shooting? No.

J365jar2

Maria - cross

1 People shot? Yes.

2 Q. Sir, you testified that you have knowledge that that's a
3 high-crime area, correct?

4 A. Correct. We have higher incidences of shootings in that
5 area.

6 Q. That is based solely on what you have been told
7 anecdotally, correct?

8 THE COURT: You mean did he do a study?

9 Q. Yes; did you do a study?

10 A. No.

11 Q. Did the precinct ever give you a study?

12 A. The precinct assigned us --

13 Q. Sir, if you answer my questions --

14 A. -- to locations --

15 Q. Sir.

16 A. I'm trying to answer the question.

17 Q. My question was --

18 THE COURT: Generals don't usually give sergeants and
19 privates the full battle plan. They tell them to go to a
20 particular place. I assume that is what is done here.

21 MS. SHROFF: I understand that.

22 THE COURT: You are contesting that this is not a
23 high-crime area?

24 MS. SHROFF: Yes.

25 THE COURT: Okay. Do you want to testify to that

J365jar2

Maria - cross

1 fact?

2 MS. SHROFF: No, your Honor. I'm going to ask him to
3 testify to that fact.

4 BY MS. SHROFF:

5 Q. You received no study that says that it has higher crimes
6 than any place else, correct?

7 A. No. My supervisors --

8 Q. Sir, did you receive a study? Yes or no.

9 A. Study? No.

10 Q. Right.

11 Did you receive any research write up? Yes or no.

12 A. No.

13 Q. Did you get any percentages? Yes or no.

14 MR. NESSIM: Objection, your Honor.

15 THE COURT: Sustained.

16 BY MS. SHROFF:

17 Q. Now, in this high-crime area you approached 10 to 12 people
18 standing on the street, correct?

19 A. 7 to 15.

20 Q. 7 to 15 people standing on the street?

21 A. Yes.

22 Q. And your testimony remains that you did not think you were
23 going to take enforcement action so you did not turn on your
24 body camera, correct?

25 THE COURT: We have been through this, haven't we?

J365jar2

Maria - cross

1 MS. SHROFF: That's my only question on that point,
2 your Honor.

3 Q. Correct?

4 A. Correct, at that time.

5 Q. And at that time it was 1:30 in the morning, correct?

6 A. Approximately, yes.

7 Q. Right.

8 And you are approaching the man who is smoking the
9 blunt, correct?

10 A. He was rolling a blunt.

11 Q. Rolling the blunt, correct?

12 A. Correct.

13 Q. And as you approach him, does he walk off?

14 A. No.

15 Q. He stays leaning against the car, correct?

16 A. Correct.

17 Q. Do you give him an order?

18 A. I didn't get the chance to speak with him at all.

19 Q. I didn't ask you if you spoke to him, I asked you if you
20 issued an order.

21 A. I did not speak with him. I did not issue anything. Words
22 did not come out of my mouth.

23 Q. Right.

24 So, you step out of your car, correct?

25 A. Correct.

J365jar2

Maria - cross

1 Q. You approach this group, correct?

2 A. Correct. I was approaching the group.

3 Q. You are approaching the group, correct?

4 A. Correct.

5 Q. No words have come out of your mouth, correct?

6 A. Correct.

7 Q. You haven't said "*police officer*," correct?

8 A. Correct.

9 Q. You are walking towards a group of 7 to 15 people without
10 saying "*police officer*" at 1:30 in the morning, correct?

11 A. Correct.

12 Q. And you haven't activated that camera, correct?

13 A. Correct.

14 Q. And you are walking towards that group until your colleague
15 distracts you, correct?

16 A. Correct.

17 Q. And your testimony is that once your colleague distracts
18 you, your attention shifts, correct?

19 A. Correct.

20 Q. And let me ask you something. When you are approaching the
21 group of seven to 15 people, does anyone of your four call for
22 backup?

23 A. No.

24 Q. Does anybody radio you are going to do a stop?

25 A. No.

J365jar2

Maria - cross

1 Q. Hasn't car looped around -- your car looped around that
2 same corner once and is now coming back for the second time?

3 A. I don't recall doing that.

4 Q. You don't recall not doing that, right? You don't know one
5 way or the other whether you did or did not; is that correct?

6 A. Correct. We were patrolling the area itself. It is
7 possible, but I couldn't tell you specifically if we did loop
8 the block.

9 Q. Right, and you specifically can't tell you didn't loop the
10 block, correct? Correct?

11 A. I suppose, yeah.

12 Q. Right.

13 And when you looped the block or did not loop the
14 block, you didn't put that in your memo book, correct?

15 A. I want to --

16 Q. Yes or no.

17 A. This is the first time I saw the group when we approached.
18 When we initially approached at approximately 1:30 in the
19 morning, that was the first time I had seen that group of
20 people.

21 MS. SHROFF: I move to strike as non-responsive, your
22 Honor.

23 THE COURT: Denied.

24 Q. Sir, do you recall writing in your memo book that you
25 looped around the block?

J365jar2

Maria - cross

1 MR. NESSIM: Objection. The witness says he doesn't
2 remember if he looped around the block.

3 BY MS. SHROFF:

4 Q. In your testimony this is the first time that you see this
5 group, correct?

6 THE COURT: That's what he said.

7 A. Correct.

8 MS. SHROFF: I'm sorry, your Honor?

9 THE COURT: That's what he said.

10 Q. And you are in the passenger seat, correct?

11 A. I'm in the back seat.

12 Q. Back seat. On which side? Do you remember?

13 A. I don't remember.

14 Q. You don't remember.

15 Who is sitting next to you, sir?

16 A. Officer Cassase.

17 Q. And the two of you are sitting in the back and who is
18 driving?

19 A. I don't remember who was driving.

20 Q. And the car moves past and you see 7 to 15 people, correct?

21 A. Correct. We slowed down on the corner and then we got out
22 of the car.

23 Q. You slowed down because you were going to approach the
24 group, correct?

25 A. Correct.

J365jar2

Maria - cross

1 Q. And you are four people in your car, correct?

2 A. Correct.

3 Q. 7 to 15 on the street, correct?

4 A. Correct.

5 Q. High-crime neighborhood according to you, correct?

6 A. Correct.

7 Q. You don't call for backup, correct?

8 A. Correct.

9 Q. You don't radio or call anybody else over, right?

10 A. Correct.

11 Q. You get out of the car as does your -- what is his name --

12 Officer Cassase, correct?

13 A. Correct.

14 Q. And your focus only shifts when he starts to talk, correct?

15 A. Correct.

16 Q. And when he starts to talk, the first thing you see is him
17 doing what?

18 A. I notice Mr. Jarvis walking frantically southbound.

19 Q. That's what you testified to directly. You noticed

20 Mr. Jarvis walking "frantically" is the word you used, correct?

21 A. Yes.

22 Q. You saw Mr. Jarvis on the street, correct?

23 A. That was the moment I saw him.

24 Q. Right. And he was walking at a fast pace, would you say?

25 A. Yes.

J365jar2

Maria - cross

1 Q. And he was not running, correct?

2 A. Not yet.

3 Q. I didn't ask you -- sir, when you first saw him, he was not
4 running, right?

5 A. When I saw him, him he was not running.

6 Q. Right.

7 Did you overhear what he said to Officer Cassase?

8 A. No.

9 Q. Did you hear Officer Cassase say to him, *Hey. Police.*
10 *Stop?*

11 A. Yes.

12 Q. And did you hear him say, *For what? I didn't do nothing.*

13 A. I noticed him shaking his head no.

14 Q. Okay. So you notice somebody saying no to a police officer
15 to stop, correct?

16 A. Correct.

17 Q. Did that worry you at all?

18 A. Yes.

19 Q. And did that make you think you might need to take some
20 enforcement action, sir?

21 A. Yes, which is why I stepped onto the sidewalk towards
22 Mr. Jarvis.

23 Q. You stepped onto the sidewalk.

24 A. Yes.

25 Q. You didn't turn on the body camera?

J365jar2

Maria - cross

1 A. No. At that point I was processing what was going on.

2 Q. You're a police officer of how many years?

3 A. Six years.

4 Q. Six years. So you know you have a process and press the
5 camera, correct?

6 A. The body camera I had for a month.

7 Q. Right; but you were trained on it, correct?

8 A. Correct.

9 Q. And you knew how to use it, correct?

10 A. Yes.

11 Q. Right. And if you didn't know how to use it I'm sure you
12 could have told the NYPD, hey, before I go out tonight to this
13 high-crime neighborhood, would you re-train me, correct?

14 A. I'm sorry. What?

15 Q. You have a piece of equipment, correct?

16 A. Yes.

17 Q. You are an NYPD officer, correct?

18 A. Yes.

19 Q. If you don't know how to use it you can ask, correct?

20 A. Yes.

21 Q. You didn't ask, correct?

22 A. Correct.

23 Q. Right. You could have turned on the button, correct? Yes
24 or no.

25 A. I attempted to turn on the button.

J365jar2

Maria - cross

1 Q. No, no. I'm not asking if you attempted to, sir. I'm
2 asking you if, at that moment, as you testified on cross while
3 you were still processing, it is a fact that you did not turn
4 on that button, correct?

5 A. That's not correct.

6 Q. In fact, sir, you did not turn on that button well after
7 Mr. Jarvis was arrested, correct?

8 A. That's not correct.

9 Q. Let me remind you that you spoke to this prosecutor on May
10 24th, 2018, correct?

11 A. Maybe.

12 Q. I'm sorry?

13 A. I don't recall the exact date I spoke with him.

14 Q. Well, let's see if we can help you out. Let me show you
15 3501-001. You went for an interview, correct?

16 A. Correct.

17 Q. May 24th, 2018? Does that document refresh your
18 recollection?

19 A. This is -- I don't know. I have never seen these notes
20 before.

21 Q. It doesn't matter. Just take a look at the front page, top
22 left column, first line.

23 A. Okay.

24 Q. Does it refresh your recollection that you met with the
25 prosecutor on May 24, 2018?

J365jar2

Maria - cross

1 A. Yes.

2 Q. You are P.O. Maria?

3 A. Maria, yes.

4 Q. Maria, yes.

5 In that interview, right -- are you there?

6 A. Yes you.

7 Q. Told this prosecutor that you did not activate the camera
8 until after the gun was recovered, correct?

9 A. It says the button flew off and tried to activate it after
10 I recovered the gun.

11 Q. Right. That's what you told the prosecutor on May 24,
12 2018, correct?

13 A. Correct, but that's not when the button --

14 Q. Sir, I didn't ask you anything more.

15 A. All right.

16 Q. Isn't that what it says?

17 A. That's what it says.

18 Q. By the way, when you were done with your shift and you
19 talked about the camera not working, correct?

20 You reported the camera not working correctly, right?

21 A. Yes, I did.

22 Q. You did not know what time it failed to record, correct?

23 A. I did, because it was the time of the arrest.

24 Q. No, no. I'm asking you if you reported the time that it
25 failed to work. You simply said it didn't work on the shift,

J365jar2

Maria - cross

1 correct?

2 A. Correct.

3 Q. Right. You didn't make any specific notation as to when it
4 didn't work, correct?

5 THE COURT: She is asking you did you tell when you
6 made your report that the camera wasn't working? Did you say
7 it didn't work at 1:06 at the corner of the Woodycrest and 166
8 as you were making an arrest?

9 THE WITNESS: You would tell your supervisor, but my
10 supervisor was there so he knew.

11 BY MS. SHROFF:

12 Q. Did you make any contemporaneous notes as to when you
13 activated the camera?

14 A. We don't notate when we activate cameras in our book.

15 Q. You don't notate when a camera fails to properly work?

16 A. No, we do.

17 Q. Okay. So, it failed to properly work, correct?

18 A. Correct.

19 Q. And you did not write down the time at which it failed to
20 properly work, correct?

21 A. You would have your supervisor --

22 Q. Sir, did you write it down anywhere?

23 A. What?

24 Q. Did you write it down anywhere?

25 A. I wrote down the ticket number in my book.

J365jar2

Maria - cross

1 Q. Right. Other than the ticket number, which is not what you
2 would ever testify to in a criminal case, you did not write
3 down at what time it failed to work, correct?

4 A. I wouldn't be required to do that if my sergeant was aware
5 of it. My sergeant would sign my book if my camera failed
6 outside of his presence.

7 Q. So, the NYPD's rule is if a camera fails to record, the
8 only time you need to make a note is if your sergeant is
9 physically not present during the failure, correct?

10 A. No. The sergeant makes a note in your book.

11 Q. Sir, it's a simple question whether the NYPD requires it or
12 not. Did you make a note?

13 A. No.

14 Q. Okay.

15 Now you testified, did you not, that you saw your
16 Officer Cassase approach Mr. Jarvis, right?

17 A. Officer Cassase, yes.

18 Q. And you saw Officer Cassase approach Mr. Jarvis and
19 Mr. Jarvis shake his head no, correct?

20 A. Correct.

21 Q. And it is correct to say Officer Cassase never told
22 Mr. Jarvis, in your presence, why he wanted him to stop,
23 correct?

24 A. In that moment? No.

25 Q. I'm only talking about that moment, sir.

J365jar2

Maria - cross

1 A. No.

2 Q. Okay.

3 And, you know, as a police officer, that if a person
4 doesn't want to stop they don't have to, correct?

5 A. That's not true.

6 Q. Okay.

7 So, your opinion is if a police officer tells you to
8 stop you have to stop. That's your position?

9 A. My position is that you can't make it -- that's not a yes
10 or no question.

11 Q. So, when Mr. Jarvis asked Officer Cassase why he should
12 stop, did you hear him ask that question?

13 A. No.

14 Q. Did you hear Officer Cassase answer him at all?

15 A. No.

16 Q. The next thing you know is Officer Cassase is on top of
17 Mr. Jarvis, correct?

18 A. No. Officer Cassase was following him, telling him to
19 stop. He was shaking his head no, then he began running.

20 Q. And how long did he run for, according to you?

21 A. Approximately 10 to 15 feet. Not far.

22 Q. That would be what? One or two seconds?

23 A. I don't know.

24 Q. You don't know?

25 A. He ran for 10 or 15 feet.

J365jar2

Maria - cross

1 Q. He ran for 10 or 15 feet, correct?

2 A. Correct.

3 Q. And then Officer Cassase jumped on Mr. Jarvis, correct?

4 A. He tackled him, yes.

5 Q. When you tackle somebody you have to jump on them, correct?

6 A. Jumped on top of him, tackled him, grabbed hold of him, and
7 pulled him to the ground.

8 Q. How?

9 A. From behind, grabbed him.

10 Q. How?

11 A. I don't know exactly how.

12 Q. You don't remember how he tackled him?

13 A. He tackled him like you would tackle a person. I don't
14 know.

15 Q. Well, did you see Officer Cassase put his hand around
16 Mr. Jarvis?

17 A. Yes.

18 Q. Did you see him push his two arms in, tackle him, and both
19 fall to the ground, correct?

20 A. I don't remember specifically how he was tackled. I
21 remember he was pulled to the ground, Officer Cassase was
22 behind him, and Officer Cassase came down on top of him.

23 Q. It would help if that body camera was on, correct?

24 A. Sure.

25 Q. Right.

J365jar2

Maria - cross

1 So, now you at least have acknowledged that he has his
2 arms -- Cassase's -- around Mr. Jarvis and pulls him down,
3 correct?

4 A. I don't remember if both his arms were around him.

5 Q. Really? You don't remember now, suddenly, that both his
6 arms were around him?

7 A. I just know that he tackled him. That's what I remember.

8 Q. I see.

9 And you have no doubt in your mind, right, that
10 Mr. Jarvis is in front and Cassase is on the back, correct?

11 A. Correct.

12 Q. And now Jarvis is below Cassase on the floor, correct?

13 THE COURT: On the street.

14 Q. Yes, on the street, your Honor. Thank you.

15 A. I don't know what you mean by directly on top of each other
16 but Officer Cassase pulled him to the ground.

17 Q. Right. So one person is -- well, Jarvis is certainly not
18 on top of Cassase, right?

19 A. Correct.

20 Q. Right.

21 So, it's Jarvis on the floor face down, right?

22 A. Correct.

23 Q. Right; and he is face down hands in, correct?

24 A. I didn't see both his hands.

25 Q. You didn't see both his hands?

J365jar2

Maria - cross

1 A. No; just his right hand.

2 Q. I see.

3 So you are approaching an officer who is on top of
4 Mr. Jarvis, correct?

5 A. Correct.

6 Q. Right.

7 And at the point that you approach, isn't the officer
8 on top of Mr. Jarvis still when you approach?

9 A. Not completely.

10 Q. Right, but he is partially still on top of him, correct?

11 A. Correct.

12 Q. And you are almost what, a whole minute behind?

13 A. A minute? No.

14 Q. No?

15 A. I'm right behind him.

16 Q. You are right behind him?

17 A. Yes.

18 Q. Right. So that means you are right behind him yet you
19 never see Cassase completely on top of Jarvis. That's your
20 testimony?

21 A. This is confusing. I'm not sure.

22 Q. You don't remember? You can say you don't remember if you
23 don't know.

24 MR. NESSIM: Objection. What does Ms. Shroff mean by
25 completely on top of?

J365jar2

Maria - cross

1 MS. SHROFF: I'm not asking you questions.

2 BY MS. SHROFF:

3 Q. Do you remember, sir?

4 A. Was Mr. Jarvis, did he completely disappear underneath
5 Officer Cassase? No --

6 Q. That's not what I asked you.

7 A. -- so I don't understand what your question is.

8 Q. Okay. Let's try this.

9 You see the police officer on top of Mr. Jarvis,
10 correct?

11 A. See him tackle Mr. Jarvis, yes.

12 Q. And then you see the tackle face down on Mr. Jarvis,
13 correct?

14 A. Correct.

15 Q. And, according to your testimony, you don't know where his
16 left hand is, right?

17 A. Correct.

18 Q. You don't know where his left arm is, correct?

19 A. When Officer Cassase was on top of his left side I moved to
20 the right side because that was the open area.

21 Q. Okay. So, now you remember that the right side was the
22 open area, correct?

23 A. That was where there was room. They were between two
24 parked cars, so.

25 Q. Right. So, you moved to the right side, correct?

J365jar2

Maria - cross

1 A. I approached them on the right side.

2 Q. And by then how many other police officers are right where
3 the two of them are?

4 A. I wasn't focused on that.

5 Q. Well, you are four people, right?

6 A. Correct.

7 Q. You know where Cassase is, correct?

8 A. Officer Cassase is to the left of Jarvis at this time.

9 Q. Right. And you know where you are to the right, correct?

10 A. Correct.

11 Q. And your testimony is that you don't know where the other
12 two police officers are, correct?

13 A. Correct. When I approached, yes, I don't remember where
14 they are. Right.

15 Q. And when approach, he is not -- by he I mean Mr. Jarvis --
16 is clearly not able to move, correct?

17 A. He is moving.

18 Q. Is he able to get up and leave?

19 A. No.

20 Q. Is he stopped?

21 A. Yes.

22 Q. Face down?

23 A. Yes.

24 Q. And Officer Cassase is cuffing him, correct?

25 A. No. He struggled to get control of his arms.

J365jar2

Maria - cross

1 Q. Right.

2 A. And his right arm was underneath his body.

3 Q. You said that a thousand times.

4 My question is Officer Cassase is trying to cuff
5 Mr. Jarvis, correct?

6 A. At what time? Are we talking about --

7 Q. When you approach Officer Cassase his goal to cuff
8 Mr. Jarvis, correct?

9 A. I can't tell you what his goal is at that time. They're
10 trying to gain control of his arms.

11 Q. Right; but officer Cassase has his cuffs out, right?

12 A. That's not correct?

13 Q. That's not correct?

14 A. No.

15 Q. You recall that at that point Officer Cassase does not have
16 his cuffs out. That you can recall?

17 A. I can tell you the handcuffs that cuffed Jarvis were not
18 Officer Cassase's.

19 Q. Okay. You do recall, though, that Mr. Jarvis' left arm is
20 not free to move anymore, correct?

21 A. I don't know what is going on with the left side of his
22 body. I am focused on his arm underneath his body. That's
23 what I'm focused on.

24 Q. Okay. Let's stay where you are focused on.

25 His arm, according to you, is underneath his body; his

J365jar2

Maria - cross

1 right arm, correct?

2 A. Yes.

3 Q. Your police officer is on the left side, correct?

4 A. Correct.

5 Q. You testified that there is no way Jarvis is going to be
6 able to get up and leave, correct?

7 A. Correct.

8 Q. He was under arrest as far as you were concerned, correct?

9 A. That's not correct. He was being stopped at this time.

10 Q. He is being stopped.

11 So if he got up and said, "Please, am I free to
12 leave?" you would have said yes?

13 A. No.

14 Q. So he wasn't free to leave, correct?

15 A. Correct.

16 Q. So, if he is not free to leave he is under arrest, correct?

17 MR. NESSIM: Objection.

18 THE COURT: Sustained.

19 Q. He is not free to leave, correct?

20 A. Correct.

21 Q. And your officer is literally right next to you, your
22 colleague, correct?

23 A. Correct.

24 Q. And your testimony is you put your hand underneath
25 Mr. Jarvis' moving body on the right side, correct?

J365jar2

Maria - cross

1 A. Correct.

2 Q. And you put your hand there because you believed there is a
3 gun, correct?

4 A. Correct.

5 Q. And you do that as a police officer, correct?

6 A. Correct.

7 Q. And by that time it is an enforcement action, correct?

8 A. Correct.

9 Q. And you still don't turn on your camera, correct?

10 A. By that time I was already --

11 Q. Sir, yes or no.

12 THE COURT: He was busy at the time.

13 Q. Sir, yes or no, do you activate your camera? Yes or no.

14 A. My camera is not activated at time.

15 Q. Okay. You did not activate it, correct?

16 A. Correct.

17 Q. Okay. And you think that Mr. Jarvis has a gun, correct?

18 A. Correct.

19 Q. And you don't cuff him first, correct, on the left side?

20 A. I'm sorry?

21 Q. Nobody cuffs his left hand and arm according to you, still,
22 correct?

23 A. Correct.

24 Q. So you have a man with a gun, nobody is cuffing his left
25 hand according to you, correct?

J365jar2

Maria - cross

1 A. He is restrained in -- they're attempting to restrain him
2 at this time.

3 Q. And there comes a point where his left arm is restrained
4 correct?

5 A. Yes.

6 Q. Right.

7 And, nevertheless, you go into his pants from the
8 right side while he is face down on the floor to retract a gun,
9 correct?

10 A. I reached for his hand that's concealed underneath his body
11 and I feel a firearm.

12 Q. Sir, you reach for the gun because you think he has a gun,
13 correct?

14 A. Correct.

15 Q. Right. So you reach for the gun, right?

16 A. Correct.

17 Q. Okay. And you reach for the gun while is he face down,
18 correct?

19 A. Correct.

20 Q. Now, do you by any chance remember where the gun was?

21 A. It was in the right side of his waistband.

22 Q. Waistband of what?

23 A. Of his jeans.

24 Q. Of his jeans.

25 Your testimony is that Mr. Jarvis had a firearm in the

J365jar2

Maria - cross

1 waistband of his jeans?

2 A. Correct.

3 Q. Did you process or play any role in Mr. Jarvis' processing
4 at the precinct?

5 A. No.

6 Q. Did you watch when he was being videotaped by your
7 colleague Officer Cassase?

8 A. No.

9 Q. Did you know how many pieces of clothing Mr. Jarvis was
10 wearing?

11 A. No.

12 Q. Did you know that he was wearing a pair of boxer shorts?

13 MR. NESSIM: He just said -- objection.

14 MS. SHROFF: I am allowed to ask, your Honor. He can
15 answer no.

16 THE COURT: Objection is overruled.

17 BY MS. SHROFF:

18 Q. Do you know if he was wearing a pair of boxer shorts?

19 A. I don't recall specific layers. I didn't see specific
20 layers on him. I saw the jeans.

21 Q. Did you see, after the boxer shorts, he was wearing a pair
22 of Nike pro leggings?

23 A. I didn't undress him. I didn't see him. After that I
24 didn't -- I didn't know what he was wearing. He had his top
25 layer was jeans. That's what I was aware of.

J365jar2

Maria - cross

1 Q. You watched the videotapes on this case, correct?

2 A. Which videotapes do you mean?

3 Q. The cameras. The body camera recordings, correct?

4 A. Yes.

5 Q. You watched the evidence in this case, correct?

6 A. The what?

7 Q. Why do you keep looking at him when are you answering me?

8 A. The evidence?

9 Q. Right.

10 A. I have looked at evidence in this case, yes.

11 Q. And you see him, do you not -- Mr. Jarvis -- wearing a pair
12 of Nike Pro underwear, right?

13 A. I -- I don't know.

14 Q. You don't know?

15 A. I don't remember him wearing pro underwear.

16 Q. Okay.

17 A. I don't recall his underwear.

18 Q. So, you don't recall the boxer shorts, you don't recall the
19 underwear, but you recall the black jeans, correct?

20 A. I remember him wearing jeans, yes.

21 Q. Right. Do you recall him having a belt?

22 A. I believe he was wearing a belt.

23 Q. Right. He was wearing a belt, correct?

24 A. Yes.

25 Q. And you played no role in vouchering any of it, correct?

J365jar2

Maria - cross

1 A. Correct.

2 Q. And after you took him to the precinct, did you play any
3 other role in this case?

4 A. No.

5 Q. Do you know if he, when he went to the state criminal
6 court, did you speak to the district attorney's office?

7 A. Bronx criminal court?

8 Q. Whatever state court, sure, Bronx.

9 THE COURT: Did you talk to the Bronx District
10 Attorney?

11 THE WITNESS: I don't recall if I spoke to the Bronx
12 District Attorney about this.

13 BY MS. SHROFF:

14 Q. Who was the arresting officer in this case?

15 A. Officer Cassase.

16 Q. And, do you know if Officer Cassase vouchered any of
17 Mr. Jarvis' clothing?

18 A. I don't know what he vouchered.

19 Q. You don't know what he vouchered?

20 A. No.

21 Q. And you have been an NYPD officer for how many years?

22 THE COURT: Six.

23 A. Six.

24 Q. And, in having been a police officer who has done -- did
25 you say about 25 gun seizures, is that what you said you have

J365jar2

Maria - cross

1 done?

2 A. Correct.

3 Q. Right. And you have testified before, correct?

4 A. I testified once in juvenile court.

5 Q. And you know it is important to voucher evidence, correct?

6 A. Correct.

7 Q. And, as far as you know, you never vouchered any of the
8 clothes Mr. Jarvis was wearing that night, correct?

9 A. I did not voucher anything.

10 Q. Now, let me just ask you a couple more questions about 166
11 and where you made the stop, correct? You approached the 7 to
12 15 people, right?

13 A. On 166 Street and Woodycrest Avenue.

14 Q. Right. And after Mr. Jarvis wads arrested, you played no
15 role in what happened to him, correct?

16 A. Correct.

17 Q. Did you remain at the scene?

18 A. No.

19 Q. Did you leave?

20 A. Yes.

21 Q. Before you left, did you take any pictures at all of any
22 blunts around that area?

23 A. No.

24 Q. Did you take any pictures of any alcohol around that area?

25 A. No.

J365jar2

Maria - cross

1 Q. Did you take pictures of any cups around that area?

2 A. No.

3 Q. Did you call for anybody to come and take photos of the
4 crime scene?

5 A. No.

6 Q. Did you call for any back up to take or voucher any of the
7 physical evidence that was there?

8 A. No.

9 Q. So you vouchered not a single piece of evidence that would
10 substantiate your claim that people were drinking or smoking at
11 that scene, correct?

12 A. Correct.

13 Q. They do tell to you voucher evidence when you train as an
14 NYPD officer, right?

15 MR. NESSIM: Objection. Relevance.

16 THE COURT: Sustained.

17 BY MS. SHROFF:

18 Q. Now, you were sitting in the back seat of the car, correct?

19 A. Correct.

20 Q. And when the car stopped, your focus was not on Mr. Jarvis;
21 is that your testimony?

22 A. Yes.

23 Q. So, according to you, you never saw Mr. Jarvis adjust
24 anything at all, correct?

25 A. I didn't notice Mr. Jarvis until he was walking down the

J365jar2

Maria - redirect

1 street.

2 Q. So, the answer would be no?

3 A. Yes. The answer would be no.

4 MS. SHROFF: Your Honor, may I just have a minute?

5 THE COURT: Yes.

6 MS. SHROFF: Thank you.

7 (Counsel conferring)

8 BY MS. SHROFF:

9 Q. Sitting here today, sir, as the car is approaching the
10 group of 7 to 15 people, you recall no conversation other than
11 what you have testified to already, correct?

12 A. Correct.

13 MS. SHROFF: Thank you. I have nothing further.

14 MR. NESSIM: Brief redirect, your Honor?

15 THE COURT: Yes.

16 REDIRECT EXAMINATION

17 BY MR. NESSIM:

18 Q. Officer Cassase, Ms. Shroff asked you some questions --

19 THE COURT: This is Officer Maria.

20 Q. I'm sorry, Officer Maria. Excuse me. My apologies.

21 Ms. Shroff asked you some questions about your memo
22 book entries. Do you remember those?

23 A. Yes.

24 Q. And she said that your memo book included a reference to a
25 disorderly group at the time of Mr. Jarvis' arrest?

J365jar2

Maria - redirect

1 A. Yes.

2 Q. What do you understand a disorderly group to mean?

3 A. A disorderly group is a group of people, or I understand at
4 least three people or more that are on a public sidewalk, are
5 in public, committing some kind of violation.

6 Q. And, what do you remember as the most important aspect of
7 the arrest of Mr. Jarvis? What fact is most important to you?

8 MS. SHROFF: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: The fact that he possessed a firearm.

11 BY MR. NESSIM:

12 Q. Did you record that in your memo book?

13 A. Yes, I did.

14 Q. When a disorderly group -- could a disorderly group be
15 smoking marijuana?

16 MS. SHROFF: Objection your Honor.

17 A. Yes.

18 THE COURT: Overruled.

19 It could be, yes. Anything is possible.

20 BY MR. NESSIM:

21 Q. There were some questions about it being a high-crime area,
22 the area of the stop?

23 A. Yes.

24 Q. When you are in a high-crime area, how do you approach each
25 incident with individuals there?

J365jar2

Maria - redirect

1 A. I approach people with respect. Sometimes a group of
2 people and often times, especially on the west side of our
3 precinct, honestly, in most areas of our precinct people will
4 commit minor violations. We will approach them and if they're
5 respectful, we don't necessarily have to issue them a summons
6 for it. It could be something you maybe warn and admonish. A
7 lot of my stops are of that fact, warn and admonish situations.

8 Q. Do you view rolling a blunt as a violent crime?

9 A. Unlawful possession of marijuana is a violation and could
10 be easily admonished, especially if that person is respectful
11 and we come to an understanding that they can't do that on the
12 sidewalk.

13 Q. There were some questions about your body camera.

14 A. Yes.

15 Q. There were some notes you were shown; do you remember
16 those?

17 A. Yes.

18 Q. Notes of our May 24th interview?

19 A. Yes.

20 Q. Have you ever seen those notes before?

21 A. No.

22 Q. Did you take those notes?

23 A. No.

24 Q. Did you try to activate your body camera during this
25 incident with Mr. Jarvis?

J365jar2

Maria - redirect

1 A. I did.

2 Q. When did you try to activate it?

3 A. At some point during the run after. While I was running
4 after him, I attempted to, as I ran approaching them on the
5 ground I attempted to snap the camera on.

6 Q. And why did you attempt to activate your camera?

7 A. Because it has now escalated to an enforcement situation.

8 Q. How long would you characterize the time period is from
9 when you first see Mr. Jarvis to when you see Officer Cassase
10 tackle him?

11 A. Seconds.

12 Q. More than 10 seconds? Or less?

13 MS. SHROFF: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Less.

16 BY MR. NESSIM:

17 Q. Ms. Shroff mentioned that you were focused on the man
18 rolling the blunt until your colleague distracted you.

19 A. Yes.

20 Q. Just to be clear, what distracted you?

21 A. He was calling out in like more of a command voice tone to
22 Mr. Jarvis and Mr. Jarvis was frantically walking. So, I heard
23 Officer Cassase call out, I looked up in that direction, and
24 quickly behind Mr. Jarvis is Officer Cassase walking.
25 Mr. Jarvis is walking frantically so I, from that I determined

J365jar2

Maria - redirect

1 that he was attempting to stop Mr. Jarvis.

2 Q. And what did Mr. Jarvis do next?

3 A. Actually continued to walk and then he quickly changed
4 direction and started to sprint westbound, tried to cross the
5 street.

6 Q. You mentioned during cross that Mr. Jarvis shook his head
7 and Ms. Shroff asked you if Officer Cassase ever said anything
8 to Mr. Jarvis about why he was stopping him.

9 Do you remember those questions?

10 A. Yes.

11 Q. Why didn't Officer Cassase answer the questions?

12 MS. SHROFF: Your Honor, how would he know why Officer
13 Cassase did something? Objection.

14 THE COURT: The objection is overruled.

15 A. In a situation like that we normally.

16 MS. SHROFF: Objection.

17 THE COURT: You have already objected. It has been
18 overruled.

19 A. Normally, if someone is trying to evade you, you don't have
20 time to have a back and forth conversation with them while
21 they're trying to run away from you, so.

22 Q. What did Mr. Jarvis did next in this situation?

23 A. He ran away from us.

24 MR. NESSIM: One moment, your Honor?

25 THE COURT: Yes.

J365jar2

Maria - redirect

1 MR. NESSIM: Thank you.

2 (Counsel conferring)

3 BY MR. NESSIM:

4 Q. In the body camera footage we saw earlier you mentioned you
5 were motioning to him?

6 A. Yes.

7 Q. What were you doing then?

8 A. I noticed that the camera was blinking red, which indicated
9 to me that it wasn't capturing any footage and that the square
10 that I slide down to activate the camera magnetically or
11 whatever, however it works had popped off, was missing.

12 Q. You mentioned turning to the ITB for technical help.

13 A. Yes.

14 Q. Did you make any notation of that?

15 A. It is in my memo book. I wrote down making an ITB ticket
16 number, which is basically a serial number for your phone call.

17 Q. Where in your memo book did you put this?

18 A. I have it right the fly page.

19 Q. On the page relating to this arrest incident?

20 A. Yes.

21 Q. There were some questions about Mr. Jarvis being on the
22 ground and Officer Cassase being on top of him and you reaching
23 underneath?

24 A. Yes.

25 Q. Why were you reaching underneath Mr. Jarvis?

J365jar2

Maria - redirect

1 A. It was my concern that his hand, that he was holding a
2 weapon in his waist and he was reaching for it and I was
3 worried about the safety of everyone.

4 Q. Would it have been possible to handcuff Mr. Jarvis while
5 his right arm was underneath him?

6 A. No.

7 Q. What did you do when you reached underneath him?

8 A. When I reached underneath him I attempted to get ahold of
9 his wrist and hand. When I grabbed onto his hand I felt on his
10 jeans there was a hard object in his jeans that felt like the
11 handle of a firearm. When I grabbed ahold of his hand I closed
12 my hand a little bit more on his fingers and further felt the
13 handle of the firearm. I let my colleagues know there was a
14 gun.

15 Q. Then what happened?

16 A. Then, eventually, my colleagues were pulling on his arms to
17 pull them behind his back; I also pulled on his arms, was
18 eventually able to get his hand out from underneath his body.
19 They grabbed ahold of that arm and secured it while I reached
20 back underneath again to recover the gun.

21 Q. And, did you recover a gun?

22 A. Yes, I did.

23 MR. NESSIM: Nothing further, your Honor.

24 MS. SHROFF: May I, your Honor?

25 THE COURT: Very briefly, Ms. Shroff.

J365jar2

Maria - recross

1 RE CROSS EXAMINATION

2 BY MS. SHROFF:

3 Q. You wrote down "observed disorderly group," correct?

4 A. Correct.

5 Q. You didn't write down "smelled marijuana," correct?

6 A. Correct.

7 Q. Didn't write "down strong odor of marijuana," correct?

8 A. Correct.

9 Q. And a strong odor of marijuana would not necessarily be
10 part of disorderly conduct, correct?

11 A. I don't understand what you are saying.

12 Q. You could be disorderly without having a strong marijuana
13 smell, correct?

14 A. Correct.

15 Q. Right. And you didn't write down strong marijuana smell,
16 correct?

17 A. Correct.

18 Q. Now, you testified that you were worried about the gun for
19 safety reasons, correct?

20 A. Correct.

21 Q. You had an officer on top or at least on the left side top
22 of Mr. Jarvis, correct?

23 A. Correct.

24 Q. You had three other police officers, correct?

25 A. Correct.

J365jar2

Maria - recross

1 Q. Not one police officer stood up Mr. Jarvis, correct?

2 A. Correct.

3 Q. And when you recovered the gun, sir, wasn't the safety on?

4 A. I recovered the gun and I handed it over to Officer
5 Cassase. The status of the safety, I have no idea.

6 Q. You recovered a gun and you didn't check if the safety was
7 on? You were so worried about your safety, though.

8 A. Sorry. We are talking about the safety on a firearm? Or
9 my personal safety?

10 Q. No, no. I'm talking about the safety on the gun, sir.

11 A. Okay.

12 Q. Did you check to see if the safety on the gun was on?

13 Why do you keep looking at this prosecutor when I'm
14 asking you questions?

15 A. Because I'm expecting him to object.

16 Q. Well, you should try and keep your eyes on me so you can
17 answer my question, sir.

18 A. I am listening to you.

19 Q. Great.

20 So, tell us, sir, when you recovered this very
21 dangerous firearm, did you check to see if the safety was on?

22 A. No.

23 Q. Now, you testified, sir --

24 THE COURT: Did you check to see if it was loaded?

25 THE WITNESS: No, he does that at the precinct.

J365jar2

Maria - recross

1 THE COURT: Was it in fact loaded?

2 THE WITNESS: What is that?

3 THE COURT: Was it loaded?

4 THE WITNESS: Yes. I learned later it was loaded.

5 BY MS. SHROFF:

6 Q. When you testified to your camera that you are doing this
7 and you see a red light, correct?

8 A. Correct.

9 Q. That's only based on what you are reciting of what you see
10 on the video, correct?

11 Sir, yes or no.

12 A. The button was missing on my camera.

13 Q. That is that's not what I asked you.

14 Is there anything on that video standing alone other
15 than your testimony, that would corroborate what you are saying
16 here today?

17 A. I would have to take another look at the video.

18 Q. Really?

19 A. Yes, really.

20 Q. Okay. Let's show it to him.

21 THE COURT: No. We are not going do that. This is
22 recross and it is discretionary. Do you have a few more
23 questions?

24 MS. SHROFF: Yes, your Honor; I do.

25 THE COURT: Okay.

J365jar2

Maria - recross

1 BY MS. SHROFF:

2 Q. You did not recite, at any point on the video, that my
3 camera is failing, correct? No or yes is the answer.

4 A. I am speaking to my sergeant about that on the video.

5 Q. Sir, do you say the camera is not working? Yes or no.

6 A. I recall saying something about the camera but you have to
7 watch the video again to determine exactly what I said.

8 Q. Do you recall --

9 THE COURT: Three more questions, Ms. Shroff.

10 MS. SHROFF: Okay, your Honor. Thank you.

11 THE COURT: I mean, you are trespassing on patience
12 here.

13 MS. SHROFF: Okay. Actually, let me see if I have
14 three more questions, your Honor.

15 THE COURT: Okay, good.

16 BY MS. SHROFF:

17 Q. You were asked on redirect about whether or not Officer
18 Cassase had time to answer Mr. Jarvis, correct? Right?

19 A. I believe I was asked about whether or not we would answer
20 at time, yeah. Correct.

21 Q. So, if a defendant or a person asked you why they're asked
22 they're being stopped, the NYPD does not have to answer, sir?

23 A. Not while I'm running away.

24 Q. At that time Mr. Jarvis wasn't running away, correct?

25 A. He was walking very quickly.

J365jar2

1 Q. Right; but he wasn't running away, correct?

2 A. But he also wasn't free to leave.

3 MS. SHROFF: Okay. He wasn't free to leave by then.

4 Thank you very much. Nothing further.

5 THE COURT: Before you go, Officer Maria: You are in
6 the back seat of the car with Officer Cassase; is that correct?

7 THE WITNESS: Yes.

8 THE COURT: You don't know which seat you are
9 occupying in the back seat?

10 THE WITNESS: I don't recall which seat, no.

11 THE COURT: And, did Officer Cassase say anything
12 about his observation of Mr. Jarvis about adjusting his
13 waistband?

14 THE WITNESS: In the car? No.

15 THE COURT: In the car before he got out?

16 THE WITNESS: No.

17 THE COURT: He didn't say he is likely to have a gun?

18 THE WITNESS: No.

19 THE COURT: You are excused. Thank you.

20 (Witness excused)

21 THE COURT: Do you have more witnesses?

22 MR. NESSIM: No, your Honor.

23 THE COURT: What do you want do then?

24 MR. MARCUS AMELKIN: What's that, your Honor?

25 MR. NESSIM: We are ready to proceed by argument but.

J365jar2

1 MR. MARCUS AMELKIN: I haven't had a chance to put on
2 a case.

3 MR. NESSIM: Sorry.

4 MR. MARCUS AMELKIN: We don't intend to call any
5 witnesses, your Honor. We would like the opportunity to brief,
6 maybe with simultaneous briefings, for post-hearing argument.

7 THE COURT: Okay.

8 MR. MARCUS AMELKIN: I would suggest a short runway,
9 maybe two weeks.

10 THE COURT: All right.

11 MR. MARCUS AMELKIN: I would also like a moment to
12 talk to the government about a couple pieces of evidence that
13 were not admitted that we would like to probably submit for
14 your review.

15 THE COURT: What are they?

16 MR. MARCUS AMELKIN: I don't think there should be any
17 issue on these. One is Officer Maria's memo book that was used
18 extensively during questioning, I don't think we admitted it.

19 THE COURT: Mr. Nessim?

20 MR. NESSIM: It's fine, your Honor. We have no
21 objection.

22 THE COURT: Okay. So, it is received in evidence.

23 (Defendant's Exhibit C received in evidence)

24 MR. MARCUS AMELKIN: The second is the Brady
25 disclosure government provided to us. We would like to rely on

J365jar2

1 it for argument but we didn't question officer about during the
2 hearing.

3 THE COURT: Okay. What is the Brady material?

4 MR. MARCUS AMELKIN: That two of the officers on the
5 team apparently recently conducted a similar stop and lied
6 about it and they no prossed the case.

7 THE COURT: Okay. Not Cassase or Maria?

8 MR. MARCUS AMELKIN: It is my understanding Cassase
9 logged the arrest but wasn't present for it.

10 THE COURT: Yes.

11 MR. MARCUS AMELKIN: But the other two officers in the
12 car are the officers at issue --

13 THE COURT: Okay.

14 MR. MARCUS AMELKIN: -- including their sergeant.

15 THE COURT: All right.

16 MR. MARCUS-AMELKIN: And then the third is we are
17 going to get Mr. Jarvis' clothes, which we believe are in
18 property at Rikers Island. We would like the Court to look at
19 the Nike Pro pants.

20 THE COURT: Okay.

21 MR. MARCUS AMELKIN: And we are going to make sure we
22 get those quick.

23 THE COURT: Now, today is the 6th of March. When do
24 you want to brief the -- I like your suggestion,
25 Mr. Marcus Amelkin, about simultaneous briefing. When do you

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1 want to do it?

2 MR. MARCUS AMELKIN: How about by the 15th, if that's
3 good with the government -- sorry, by the 22nd, if that's good
4 with the government.

5 THE COURT: Mr. Nessim?

6 MR. NESSIM: That's fine, your Honor.

7 THE COURT: Both briefs by the 22nd. I will give you
8 one week to reply to the briefs and that will be by the 29th.

9 MR. NESSIM: Thank you, your Honor.

10 Just a note on the Brady disclosure that defense
11 counsel mentioned?

12 THE COURT: Yes.

13 MR. NESSIM: We certainly think that the Court can
14 consider it and it can form the basis of arguments. Whether it
15 is formal exhibit as part of the court record, I think we have
16 concerns. I think there are ongoing actions taking place as a
17 result of referrals that were made pursuant to the events in
18 question so it may be a distinction without a difference but we
19 ask that it be sealed if it is in the record as a formal
20 exhibit.

21 THE COURT: I think you can work that out with
22 Mr. Marcus Amelkin and if you can't, bring it to my attention
23 and I will resolve it for you.

24 MR. NESSIM: Thank you, your Honor.

25 THE COURT: Okay.

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1 MS. SHROFF: Your Honor, are we adjourned?

2 THE COURT: You are adjourned, yes.

3 MS. SHROFF: Thank you.

4 THE COURT: Thank you Mr. Jarvis.

5 THE DEFENDANT: Thank you, your Honor. Have a good
6 day.

7 THE COURT: Same to you.

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